Supreme Court, U. S.
FILED
FEB 5 1979
MICHAEL RODAK, JR., CLERK

78-1213

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

JOHN P. PARIS,

Petitioner

v.

LAWRENCE E. COOPER, et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

[redacted]

RAYMOND A. CUNNINGHAM, ESQ.
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341 W. Ponce de Leon Avenue
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PETITION FOR CERTIORARI

NOW COMES the Petitioner in the above-captioned matter, JOHN P. PARIS d/b/a PARIS PROPERTIES, and shows this Honorable Court that each of the following opinions rendered by the State Courts of the State of Florida is improper and violative of Petitioner's Due Process rights under the Fourteenth Amendment to the United States Constitution.

1. On Feburary 13, 1976, Petitioner filed a Motion to Dismiss Respondent's Complaint for lack of jurisdiction (See Appendix, pp. B 1-3, hereinafter referred to as "B 1-3"). On the 22nd day of April, 1976, the Honorable Judge Larry G. Smith of the Circuit Court of the Fourteenth Judicial Circuit of the State of Florida in and

for Gulf County held that Florida had proper jurisdiction in this case.

2. On the 28th day of April, 1976, Defendant filed a motion for re-hearing regarding Judge Smith's Order of April 22, 1976 (E 1-3) regarding jurisdiction, and on the 5th day of May, 1976, said motion was denied. (F 1-2).

3. On the 25th day of February, 1977, the Honorable Judge Larry G. Smith of the Circuit Court, Fourteenth Judicial Circuit of the State of Florida, in and for Gulf County, held that the mortgages and notes entered into between Petitioner and Respondent (both of whom are now, and were at the time of the execution of said notes and mortgages, residents of the State of Georgia) were invalid. (G 1-16).

4. On the 13th day of May, 1977, Petitioner's counsel in Florida

filed an Appeal with the District Court of Florida, First District, State of Florida and on the 18th day of November, 1977, said Court affirmed the decision of the Trial Court. (H 1-6).

5. On the 1st day of December, 1977, Petitioner filed a Petition for Rehearing in the District Court of Appeal, First District, State of Florida (I 1-8), and on the 22nd day of December, 1977, said Court denied the Petition for rehearing. (J-1).

6. On the 19th day of January, 1978, Petitioner filed a Writ of Certiorari to the Supreme Court of Florida, and on the 31st day of July, 1978, the Florida Supreme Court denied said Writ of Certiorari. (K 1-2).

7. On the 9th day of August, 1978, Petitioner filed a Petition for Re-hearing before the Florida Supreme

Court (L 1-4) and on the 8th day of November, 1978, the Florida Supreme Court denied said petition. (M-1).

JURISDICTION

Jurisdiction of this Writ of Certiorari is vested in the United States Supreme Court pursuant to 28 USCA 1257(3) (Q 1-2) and Petitioner specifically shows the following:

1. The judgments referred to in the paragraphs enumerated above are the judgments which Petitioner specifically prays be reviewed by the the United States Supreme Court.

2. As noted above, jurisdiction is vested in this Court pursuant to 28 USCA 1257(3) by virtue of the Petitioner's rights pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution. (R-1)

QUESTIONS PRESENTED FOR REVIEW

QUESTIONS PRESENTED FOR REVIEW (23 C)

1. Whether a State's inherent jurisdiction permits it to void in its entirety a contract between two non-residents made outside the State regarding the validity of the contract and promissory notes outside said state, without violating a defendant's due process rights under the Fourteenth Amendment of the United States Constitution?

2. Whether the "minimum contacts" rule of International Shoe should be applied to an isolated transaction within the forum state?

3. Whether jurisdiction of non-residents may be acquired by violation of a statute within the forum state by one of the non-resident parties?

4. Whether the State of Florida's assertion of jurisdiction in this case is inconsistent with the constitutional limitation on state power?

CONSTITUTIONAL PROVISIONS

Section 1 of Amendment XIV of the United States Constitution provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws.

FACTS

Petitioner, a Georgia resident (C-4), represented Respondent, a Georgia resident (C-5), in several land transactions in the State of Georgia (C 4-5). Petitioner and Respondent had an agreement whereby Petitioner was to make Respondent aware of proposed land purchases. (C-5).

In 1973 Petitioner received information that certain property was for sale and contacted Respondent regarding this property, said property being located in the State of Florida (C 5-6). Petitoner and Respondent entered into an Agreement whereby Petitioner would represent Respondent as a real estate consultant regarding this transaction and Petitioner

would be paid ten (10%) per cent of the cost of the property as his fee for the time and services rendered in connection with the transaction. (C-8). Respondent subsequently entered into a contract for the purchase of the said property, said contract having been signed by Petitioner in the State of Georgia. (C-10). All communication between Respondant and Petitioner and all agreements signed between Respondent and Petitioner were executed in the State of Georgia.

Respondent purchased said property in Florida for the sum of $3,150,750.00, and pursuant to their agreement, Petitioner received a $100,000 check from Respondent and a $215,000 promissory note (T 1-9), said note having been executed by Respondent and made payable to Hilton & Associates, the Seller of the property. As per an

earlier agreement with Petitioner and Respondent, Hilton & Associates (the sellers) assigned said promissory note to Petitioner without recorse. (C 11-13; T 8-9). Subsequently, at Respondent's request, Petitioner gave the $100,000.00 check back to the Respondant and Respondent gave Petitioner a check in the amount of $25,000.00 and a $75,000.00 promissory note executed in the State of Georgia, and made payable to the Petitioner, in the State of Georgia (C-13; U-1).

In January of 1976, Respondent brought an action in the Circuit Court, Fourteenth Judicial Circuit of the State of Florida, in and for for Gulf County, to declare Respondent's notes to Petitioner null and void.

On February 13, 1976, Petitioner filed a motion to dismiss for lack of

jurisdiction (B 1-3), but said Motion was overruled by the trial court, on April 22, 1976. (D 1-2). On April 28, 1976, Petitioner filed a Motion for Rehearing on the jurisdictional question (E 1-3), but said motion was denied by the Trial Court on May 5, 1976 (F 1-2).

After Respondent's Complaint was filed and after the Trial Judge ruled that Florida had jurisdiction over Petitioner, the Sellers, represented by Hilton, one of the Sellers, brought a foreclosure proceeding to foreclose on Respondent's mortgage to Sellers, said mortgage having gone into default. The litigation regarding the foreclosure proceeding by the Sellers is not relevant to this case nor dispositive of the issued raised by Petitoner's Writ of Certiorari.

On February 25, 1977, the Circuit

Court subsequently found the mortgage deeds and notes to be in violation of Florida law and declared them null and void. (G 1-16).

Petitioner appealed the decision of the Circuit Court to the District Court of Florida, First District, State of Florida, but said Court affirmed the decision of the trial court both upon initial review and upon a Motion for Rehearing (H 1-6; J-1). Petitioner then petitioned the Florida Supreme Court for a Writ of Certiorari, but said Writ was denied (K-1), as was Petitoner's Motion for Rehearing (M-1).

FEDERAL QUESTIONS

The federal question regarding Petitioner's Due Process rights was initially raised by Petitioner in the Trial by a Motion to Dismiss for lack of jurisdiction of the person and the

subject matter (B 1-3), and said motion was summarily denied by the Trial Judge (D-1).

Petitioner then filed a Motion for Rehearing on the question of jurisdiction (E 1-3), but the Trial Judge once again summarily denied said motion.

Petitioner contends that judgment of the Florida Supreme Court is void in that the State of Florida's assertion of jurisdiction over Petitioner in this case is inconsistent with the constitutional limitation on state power. See, Shaffer v. Heitner, 433 U.S. at 204.

Petitioner's summary of argument to District Court of Appeals is contained in Exhibit V(1-3).

Petitioner's arguments to the Florida Supreme Court are contained in Exhibit W(1-4).

ARGUMENT

It is respectfully submitted that the present case of Paris v. Cooper is one in which there is a special and important reason for this Honorable Court to grant Petitioner's Writ of Certiorari, namely, for the reason that the Courts of the State of Florida have decided this case in contravention of Petitioner's due process rights under the Fourteenth Amendment to the United States Constitution and the decisions of the Florida Courts are probably not in accord with the applicable decisions of this Court.

As has been indicated, the facts involve a Georgia real estate broker, JOHN P. PARIS (Petitioner), who, in this case, contends that he acted not as a real estate broker, but as a consultant; a Georgia resident, DR. LAWRENCE E. COOPER (Respondent), who purchased

property in the State of Florida; and a group of Florida sellers, led by L. CHARLES HILTON, JR., who acted as principal and as attorney for the Florida sellers.

In Kulko v. Superior Court of California, No. 77-293, decided May 15, 1978, this Honorable Court ruled:

> "Like any standard that requires determination of 'reasonableness' the 'minimum contacts' test of International Shoe is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present. Hanson v. Denckla, 357 U.S. 235, 246 (1958). We recognize that this determination is one in which few answers will be written

> 'in black and white. The greys are dominant and even among them the shades are innumerable.'
> Estin v. Estin. 334 U.S. 541, 545 (1948).

The Kulko case, supra., following the Court's landmark decision in Shaffer v. Heiter, 433 U.S. 186, involved a question of jurisdiction of domestic relations cases. The Court's decision to rule on this subject should be applauded by all citizens, and particularly attorneys, and lower Courts, because of the huge volume of cases arising daily concerning similar jurisdictional questions in every state in the Country.

It is likely that jurisdictional questions involving real estate transactions such as the case sub judice are third only to issues as to business transactions involving personal property

and domestic relations issues concerning Fourteenth Amendment due process requirements in states foreign to one or more of the litigants.

For this reason, it is respectfully submitted that the issue presented in this case is one of imperative public importance and is a logical case for the Court to grant certiorari following the Shaffer, supra., and Kulko, supra., decisions.

The test, of course, is minimum contacts, and traditional notions of fair play and substantial justice. And the relationship between the forum, the defendant and the litigation. But the paramount concern is inherent jurisdiction. International Shoe Co. v. Washington, 326 U.S. 310; Pennoyer v. Neff, 95 U.S. 714.

In short, the Florida Circuit Court

assumed jurisdiction of two notes held by PARIS in the State of Georgia, which notes were issued to him in the State of Georgia by another Georgia resident, namely the Respondent, pursuant to a complaint for declaratory judgment filed by the Respondent two years after issuance of the Notes to Petitioner.

As has been stated in the Shaffer case, supra.:

> 'Moreover, even if Heitner's assessment of the importance of Delaware's interest is accepted, his argument fails to demonstrate that Delaware is a fair forum for this litigation.'---"But we have rejected the argument that if a State's law can properly be applied to a dispute, its courts necessarily have jurisdiction over the parties to that dispute.'

In Hanson v. Denckla, 357 U.S. 235, 254, the Court states:

> "The issue is personal jurisdiction, not choice of law. It is resolved in this case by considering the acts of the [Appellants]."

In his dissent in the Shaffer case, supra., at page 186 Justice Brennan states succinctly:

> "To be sure, the Court is not blind to these considerations. It notes that the State's interests 'may support the application of Delaware law to resolve any controversy over appellants' actions in their capacities as officers and directors.' Ante, 215. But this, the Court argues, pertains to choice of law, not jurisdiction. I recognize that the

> jurisdictional and choice-of-law inquiries are not identical. Hanson v. Denckla, supra., 254.

What were Petitioner's contacts within the State of Florida in regard to respondent?

It may be said that Petitioner acted either as a consultant or a broker in a single, isolated instance regarding a Florida real estate transaction.

The Petitioner is a licensed Georgia real estate broker, who, unlike most brokers, primarily represents buyers rather than sellers. He contends that he held a continuing relationship with the Respondent for services, not only as a real estate agent, but also as a consultant and adviser in various real estate transactions over a period of several years. He also contends that the Notes sought to be cancelled represented

consideration for all services rendered to Respondent by Petitioner.

The Petitioner admittedly acted as Respondent COOPER'S agent in evaluating the property, and he assisted Respondent's attorneys with various details in connection with the purchase of the property. The purchase represented a large transaction - in excess of Three Million Dollars. For his services, Petitioner received from Respondent, in the State of Georgia, Twenty-Five Thousand Dollars in cash and two promissory notes. One was for Seventy-Five Thousand Dollars, which was unsecured. The other was for Two Hundred Fifteen Thousand Dollars secured by a mortgage on the Florida property. The notes and mortgage show on their face that they were delivered in the State of Georgia.

Were the contacts as outlined above sufficient to satisfy the Constitutional requirements of due process as required by International Shoe, supra.?

Petitioner submits that the contacts and facts of this transaction do not satisfy the minimum contacts and traditional notion of fair play and substantial justice for the following reasons:

1) This transaction represented an isolated instance;

2) The Petitioner perpetrated no injury on the Respondent or seller;

3) The Respondent's attorney's prepared the sales contract and the seller was himself a licensed Florida attorney;

4) The buyer and the seller ratified the transaction and continued to ratify it for more than two years after

they had reached an agreement.

In the case of Dorothy K. Winston & Co. v. Town Heights Development, Inc., 376 F.Supp. 1215 (DDC 1974), the Court considered the validity of an isolated agreement between a broker not located in Florida (Winston) and a client.

> "A real estate broker of one state who engages in isolated instances of selling real estate in another state is not subject to the statutory requirements of the latter state as to the necessity for procuring a license as a real estate broker; and, if he is duly licensed according to the laws of the state where the contract of employment was made, he may recover his commissions notwithstanding the fact that he is not licensed according to the law of either the

> situs of the property or the state of the forum, if the forum is in a different state."

A similar holding is found in the Fifth Circuit case of Pearce v. Previews, 201 F.2d 385 (5th Cir. 1953), in which a New York broker negotiated a sale in Florida. A summary judgment was granted in favor of the broker in that case.

Also, in the case of Tillman v. Gibson, 44 Ga. 440 (S.Ct. 1931) we find the following facts and decision:

> "This was a suit on promissory notes executed by the defendant to the plaintiff under an assumption by the defendant of real estate commissions due the plaintiff on account of the sale to the defendant of certain real estate and turpentine leases in the State of Florida."

The defendant specifically pleaded that ". . . the plaintiff had failed to comply with the Florida Statute requiring real estate brokers and agents to obtain licenses to do business in that state . . . " The Georgia Supreme Court ruled, simply:

> "In the instant case, which involved an ordinary broker's contract listing real estate located in the State of Florida, made in the State of Georgia with a Georgia broker, there is nothing to indicate from the contract that the work of finding a purchaser ready, able and willing to buy the property on the terms stipulated by the owner was to be performed outside of the State of Georgia. Consequently, the laws of this State will govern as to the

> validity, nature, obligation and construction of the agreement. Accordingly, in the instant suit on notes given by the purchaser of the property to the broker in settlement of the commissions of the broker, which commissions the purchaser had assumed under contract for the purchase and sale of the property, a recovery was not unauthorized on the ground that the broker had failed to comply with the Florida law licensing real estate brokers." (emphasis added).

It thus appears that if this litigation had been brought in the appropriate United States District Court or the Georgia Courts, a different conclusion would have been reached. See also: Robert M. Green v. Chicago Burlington & Queens Ry. Co., 205 U.S.

530; Maxwell v. Atchison T. & S. Ry. Co., 34 Fed. 286; N. K. Fairbank & Co. v. Cincinnati, N. O. & T. P. R. Co., 4 C.C.A. 403, 9 U.S.App. 212, 54 Fed. 420; Union Associated Press v. Times-Star Co., 84 Fed. 419; Earle v. Chesapeake & O. R. Co., 127 Fed. 235. Under these circumstances, it is obvious why the Respondent, a Georgia citizen, sought the jurisdiction of the Florida Courts to file suit against his fellow Georgia resident.

Has the Petitioner violated the letter or the spirit of Florida Statute 475.1(2) when the Respondent has retained attorneys to prepare the contracts and the leading representative of the selling group is himself a licensed Florida attorney?

What part does the Florida licensing law play in meeting the

jurisdictional requirements of International Shoe, supra., in connection with traditional notions of fair play and substantial justice?

In the case of Geneva Investment Limited v. Trafalgar Developers, Ltd., 274 So.2d 581 (1973) the Court ruled:

> ". . . the purpose of the Real Estate Licensing Act is to protect the public from being forced to deal with dishonest or unscrupulous real estate operators, rather than to permit one party to gain an unconscionable advantage by avoiding a just obligation which he has contracted to pay. [citing Pokress]."

And, in Pokress v. Tisch Florida Properties, Inc., 153 So.2d 346 (3rd Dist., 1963), the Court states:

> "In addition to what we have

just stated regarding the public policy aspects of this situation, there is one other that commands our attention. In Bell v. United Farm Agency, Inc., 296 P.2d 149, 152 (Okla., 1956), the Supreme Court of Oklahoma had the following to say involving a real estate brokerage commission for a plaintiff not licensed in Oklahoma:

'. . . The obvious purpose of the Act in question was to protect the public from being forced to deal with dishonest or unscrupulous real estate operators, rather than to permit one party to gain an unconscionable advantage by avoiding a just obligation which he has contracted to pay.'

In the case of Morgan v. Glassman, 285 So.2d 673 (1973), the Third District court held:

"No protection of the public would be accomplished by the application of the statute; rather, the defendants would gain an unconscionable advantage by avoiding a just obligation which they had contracted to pay."

Jurisdiction of this transaction was sought in the State of Florida for only one reason. Because of the Florida licensing law which is penal in nature. It provides criminal penalties for its violation in the form of fines and up to six months in jail for violation

Although the Petitioner held as security a mortgage on the Florida property, the Respondent did not seek jurisdiction of the Florida Court based

on the ownership of any real or personal property owned by the Petitioner in the State of Florida. He does not mention the mortgage in his Complaint. He brought his action to cancel the notes which were in the State of Georgia and which were given to Petitioner in the State of Georgia by Respondent. For this reason, the Respondent does not look to the historical arguments contained in Pennoyer v. Neff, 95 U.S. 714, as to either in rem or in personam jurisdiction, and he does not cite such facts in his Complaint. The Petitioner was the Respondent's own agent. The trial court found this to be true and stated:

"At no time did Paris act in behalf of the Sellers."

If the respondent is relying on the minimum contacts of the Petitioner in the

State of Florida, the facts of the case constitute a set of circumstances far different from any this Court has previously ruled upon. The well-reasoned standards of International Shoe, Hanson v. Denckla, supra., Shaffer, and Kulko should not apply to the two non-residents under the facts of this case. Rather, the parties should be left to settle their differences where they entered into the contract and where they reside.

The decision of the Florida Supreme Court is a nullity because it has declared void a Georgia contract in violation of the Fourteenth Amendment and Article 1, §8, Clause 3 of the United States Constitution.

The Respondent did not base his action on the premise that the property herein involved was situated in Florida. He asked for the cancellation of the

notes and for a money judgment against Petitioner in the sum of $37,000.00.

In the entire line of Pennoyer - Shaffer cases, each either involves a party resident in the State in which jurisdiction is sought or a remedy as to property within the State. In the case sub judice and at the trial, there was no such plea. Service, as well as jurisdiction of the person and subject matter was challenged from the outset.

The Shaffer case, supra., generally ruled that:

> [T]he focus shifted to the relationship among the defendant, the forum and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of Pennoyer had rested). Long arm statutes came into being to afford redress for citizens of

their own state against injuries by non-residents. See generally, Pennoyer v. Neff, supra., Hanson v. Denckla, supra., at p. 252.

Although acts submitting a person or corporation to jurisdiction in a foreign state have been further delineated in cases subsequent to Pennoyer, supra., the basic principles of Pennoyer have not been overruled. This is evidenced by the next to last sentence of the Shaffer opinion where the Court ruled:

> "Delaware's assertion of jurisdiction over appellants in this case is inconsistent with the Constitutional limitation on state power."

Shaffer, p. 204.

It is apparent that the State of Florida has no inherent right to regulate

the contracts of out-of-state residents. The overruling of certain portions of Pennoyer by Shaffer did not overrule the general principle that:

> "One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil status and capacities of its inhabitants; to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations arising from them, and the mode in which their validity shall be determined and their obligations enforced; and also to

regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed and transferred. The other principle of public law referred to follows from the one mentioned; that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory. Story, Confl. Laws, c. 2; Wheat. Int. Law, pt. 2, c. 2. The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by

comity; and that no tribunal establshed by it can extend its process beyond that territory so as to subject either persons or property to its decisions. 'Any exertion of authority of this sort beyond this limit,' says Story, 'is a mere nullity, and incapable of binding such persons or property in any other tribunals." Story, Confl. Laws, sect. 539.

But as contracts in one State may be enforceable only in another State, and property may be held by non-residents, the exercise of the jurisdiction which every State is admitted to possess over persons and property within its own territory will often affect persons and property without it. To any influence exerted in this way by a

State affecting persons resident or property situated elsewhere, no objection can be justly taken; whilst any direct exertion of authority upon them in an attempt to give ex-territorial operation to its laws, or to enforce an ex-territorial jurisdiction by its tribunals, would be deemed an encroachment upon the independence of the State in which the persons are domiciled or the property situated, and be resisted as usurpation.

Thus the State, through its tribunals, may compel persons domiciled within its limits to execute, in pursuance of their contracts respecting property elsewhere situated, instruments in such form and with such solemnities

as to transfer the title, so far as such formalities can be complied with; and the exercise of this jurisdiction in no manner interferes with the supreme control over the property by the State within which it is situated. Penn v. Lord Baltimore, 1 Ves. 444; Massie v. Watts, 6 Cranch, 148; Watkins v. Holman, 16 Pet. 25; Corbett v. Nutt, 10 Wall. 464.

Of course, the State of Florida has a right to regulate certain activities within the State. But, where does that jurisdiction end? And, to whom should it be applied? And, under what circumstances? The case of Hanson v. Denckla, 357 U.S. 225, 252 ruled:

"This case is also different from McGee in that there the State had enacted special legislation

(Unauthorized Insurers Act, West's Anno. Cal. Insurance Code 61610, et seq.) to exercise what McGee called its "manifest interest in providing effective redress for citizens who had been injured by non residents engaged in an activity that the State treats as exceptional and subjects to regulation. CF Travelers."

Does the State of Florida have a right to regulate the contract of non-residents who do not claim injuries? Over two years after the contract was entered into? And which contract was drawn up by the complaining party's own attorney? And sanctioned by a licensed Florida attorney who represents the sellers? Is it a valid regulatory function of the State of Florida to provide a forum in which one

party may execute a contract one day and repudiate it whenever he seeks to do so? The Florida Court overlooks the premise that it has inherent jurisdiction only to regulate Florida contracts or contracts sought to be enforced or carried out in the State of Florida. The contract in question was not entered into in the State of Florida and no attempt was made to enforce its terms in the State of Florida. The statute in question begins:

Chapter 475 REAL ESTATE LICENSE LAW

475.01

(1) - -

(2) Every person who shall, in this State, for another and for a compensation or valuable consideration directly or indirectly -- (emphasis supplied).

The above cited law correctly

indicates that the State of Florida has a right to regulate only transactions by persons "in this State". To permit regulation of contracts made without the State between out-of-state residents represents an undue burden upon trade and commerce between the States, in violation of the commerce clause. United States Constitution, Article 1, Section 8, Clause 3.

Petitioner does not challenge the validity of this regulatory law. But, Petitioner does challenge its interpretation and application as it affects due process and contracts between non-residents. The interpretation of the Florida Courts makes no provision for isolated instances. Florida, as does any State, has licensing provisions of its laws for lawyers, doctors, engineers, and architects. If any professional or

quasi-professional individual performs a one-time service for a regular client or customer in a foreign jurisdiction, are the jurisdictional requirements of Pennoyer and Shaffer met when the State assumes jurisdiction of both non-residents, requiring them to retain attorneys in that foreign jurisdiction, submit to its jurisdiction via long arm statutes, and then void the contract? Such practices go beyond any regulatory benefits to aggrieved citizens of the State of Florida which reasoning first justified the assumption of jurisdiction. Denckla, supra.

Petitioner submits that the Florida Courts have assumed jurisdiction of a non-resident defendant in a case in which the assertion is inconsistent with the constitutional limitation on State power. Shaffer v. Heitner, supra., Pennoyer v.

Neff, supra.

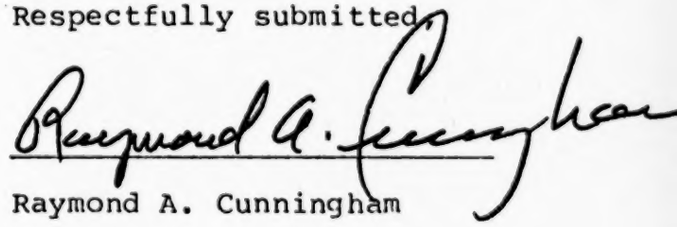
WHEREFORE, Petitioner respectfully requests that:

1. This Honorable Court grant this Writ of Certiorari;

2. This Honorable Court reverse the decision of the Florida Supreme Court;

3. This Honorable Court grant such other and further relief as this Court deems meet and proper.

Respectfully submitted,



Raymond A. Cunningham

Cunningham & Clarke

341 W. Ponce de Leon

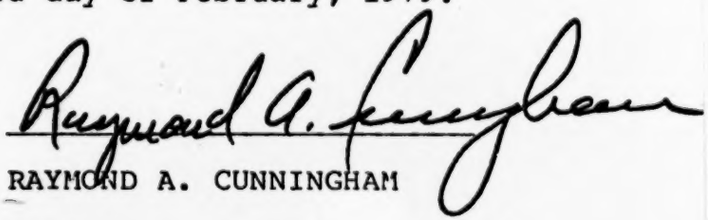
Decatur, Georgia 30030

(404) 377-9277

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above has been mailed to William E. Williams, Esq., P. O. Box 5617, Tallahassee, Florida AND to L. Charles Hilton, Jr., Welch, Hilton, Bennett, Logue & Burke, P.A., P. O. Box 2462 Panama City, Florida 32401.

This 3rd day of February, 1979.



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78-1213

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APPENDIX

RAYMOND A. CUNNINGHAM, ESQ.
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A P P E N D I X

T A B L E O F C O N T E N T S

Cooper v. Paris, Circuit Court, Fourteenth Judicial Circuit, in and for Gulf County Florida - COMPLAINT . . . . . .A(1-11)

Cooper v. Paris, Circuit Court, Fourteenth Judicial Circuit of the State of Florida, in and for Gulf County - MOTION TO DISMISS. . . . . .B(1-3)

Cooper v. Paris, Circuit Court, Fourteenth Judicial Circuit of the State of Florida, in and for Gulf County - AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS . . . . . .C(1-16)

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IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT, IN AND FOR GULF COUNTY, FLORIDA

CASE NO. _____

DIVISION _____

LAWRENCE E. COOPER,

Plaintiff

v.

JOHN P. PARIS, ind. & d/b/a PARIS PROPERTIES

C O M P L A I N T

Plaintiff, Lawrence E. Cooper, sues defendant, John P. Paris, individually, and doing business as Paris Properties, and says:

1. This is an action for a declaratory judgment pursunt to the provisions of Florida Statutes, Chapter 86, to cancel and/or rescind promissory notes, and to recover damages in an amount that exceeds $2,500.

2. Defendant John P. Paris, doing business as Paris Properties ("defendant"), is a resident of the State of Georgia, and is operating, conducting, engaging in or carrying on a business or business venture in the State of Florida, within the intent and meaning of Florida Statutes, Section 48.181 and Section 48.193, as hereinafter more fully appears.

Count I

3. In or about August, 1973, John P. Paris, doing business as Paris Properties, contacted plaintiff in an attempt to induce plaintiff to purchase the real estate ("the property") described in Exhibit "A" hereto, located in Gulf County, Florida, and then belonging to Hilton & Associates, a Florida partnership.

4. From and after August, 1973,

when defendant initially contacted plaintiff, defendant, with the intent and expectation of collecting or receiving a commission, compensation, or valuable consideration for his services, directed and negotiated the closing and sale of the property from Hilton & Associates, a Florida partnership consisting of L. Charles Hilton, Jr., Charles E. Faircloth and William C. Grimsley, Jr. ("Hilton & Associates"), to plaintiff.

5. On or about September 15, 1973, plaintiff, Hilton & Associates and defendant entered into a Contract for Purchase and Sale of Real Estate, a copy of which is attached hereto as Exhibit "B", and by reference made a part hereof, wherein plaintiff, as consideration for the services of defendant, agreed to pay to defendant at the closing of the transaction, the sum of $100,000 in cash,

and $215,070 in the form of a promissory note, as and for a commission for services rendered by defendant in assisting in the negotiation and closing of the sale of the property to plaintiff.

6. On or about December 10, 1973, plaintiff, Hilton & Associates and defendant, entered into the Modification and Contract for Purchase and Sale of Real Estate attached hereto by copy as Exhibit "C" and by reference made a part hereof.

7. On or about February 8, 1974, plaintiff, HIlton & Associates and defendant, by letter agreement, a copy of which is attached hereto as Exhibit "D," and by reference made a part hereof, agreed that, notwithstanding the provisions of paragraph 15 of the agreement attached hereto by copy as

Exhibit "B," plaintiff would, at the closing of the sale of the property, execute a promissory note in the amount of $215,070, payable to Hilton & Associates, and that the note would then be assigned without recourse by Hilton & Associates to defendant.

8. At the closing of the sale of the property to plaintiff, on or about February 11, 1974, plaintiff executed and delivered to defendant a promissory note in the principal amount of $75,000, an unexecuted copy of which is attached hereto as Exhibit "E," and by reference made a part hereof, the original of which note is or may be in the possession of defendant, together with a promissory note in the principal amount of $215,070, an unexecuted copy of which is attached hereto as Exhibit "F," and by reference made a part hereof, the original of which

is or may be in the possession of defendant.

9. In addition to the promissory notes attached hereto by copies as Exhibits "E" and "F," plaintiff paid to defendant, in cash, the sum of $25,000 at the closing of the sale of the property to plaintiff, which $25,000, together with the promissory note in the principal amount of $75,000, a copy of which is attached hereto as Exhibit "E," fulfilled plaintiff's obligation to pay $100,000 to defendant pursuant to paragraph 15 of Exhibit "A" attached hereto.

10. The $25,000 cash payment made by plaintiff to defendant at the closing, together with the amounts represented by the promissory notes attached hereto by copies as Exhibits "E" and "F," constitute the payment to

defendant by plaintiff of a 10% real estate brokerage commission for his services in negotiating the closing and sale of the property to plaintiff, based upon the total sales price of the property of $3,150,700.

11. Although the promissory note attached hereto by copy as Exhibit "F" was made payable to Hilton & Associates, it was endorsed without recourse by Hilton & Associates, it was endorsed without recourse by Hilton & Associates at the closing to defendant, which transaction constituted a mere contrivance, artifice or device to circumvent the provisions of the Florida Real Estate License Law, Florida Statutes, Chapter 475.

12. At all times material hereto, during the time of the negotiation and sale of the property to

plaintiff, and the collection by defendant of a real estate broker's commission for that sale, as hereinbefore alleged, defendant was not a licensed real estate broker under the laws of the State of Florida, as required by Florida Statutes, Section 475.13, which fact was then unknown to plaintiff.

13. By reason of defendant's failure to procure a real estate broker's license in the State of Florida, he was not, and is not, entitled to demand or collect any commission for the sale of the property, and the contract between plaintiff and defendant for the payment of a real estate broker's commission is void, violative of the public policy of the State of Florida established in Florida Statutes, Chapter 475, and is incapable of enforcement.

14. Defendant, by letters dated

April 1, 1975, copies of which are attached hereto as Exhibits "G" and "H," has declared plaintiff in default on the notes attached hereto as Exhibits "E" and "F," and plaintiff is uncertain of his rights and remedies pursuant to the Florida Real Estate License Law, Florida Statutes, Chapter 475, and there is an actual, bona fide dispute with reference thereto which requires a judicial determination of plaintiff's rights.

15. Plaintiff has no adequate remedy at law.

Count II

16. Plaintiff specifically realleges and incorporates herein by reference the allegations of paragraphs 1 through 15 hereof.

17. Pursuatn to the terms of the contracts attached hereto by copies as Exhibits "B," "C" and "D" and the

promissory notes attached hereto by copies as Exhibits "E" and "F," plaintiff has paid, and defendant has accepted monies totaling $37,904, which sums are rightfully the property of, and should be returned to plaintiff, in that the sole consideration for the payment of said sums, and for the execution and delivery of the said promissory notes was the performance by defendant of services in violation of the laws and public policy of the State of Florida.

WHEREFORE, plaintiff prays the Court order, adjudge and declare:

1. That the defendant, because of his violations of the provisions of the Florida Real Estate License Law, is not entitled to maintain an action on, or to collect any sums on account of the contracts attached hereto by copies as Exhibits "B," "C" and "D," and the

promissory notes attached hereto by copies as Exhibits "E" and "F," and that as between plaintiff and defendant, those agreements are void, cancelled and of no force and effect;

2. That the defendant shall remit to plaintiff all monies received by him pursuant to the aforesaid agreements between the parties, together with interest thereon, and the costs of this action.

3. That plaintiff have such other and further relief as may be proper.

MAHONEY, HADLOW, CHAMBERS & ADAMS

By: S/WILLIAM E. WILLIAMS

Attorneys for Plaintiff

Post Office Box 5617

Tallahassee, Florida 32301

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

LAWRENCE E. COOPER,

Plaintiff

V.

JOHN P. PARIS, ind. &
d/b/a PARIS PROPERTIES,

Defendant

Case No. 76-15

MOTION TO DISMISS

COMES NOW the Defendant, JOHN P. PARIS, by and through his undersigned attorneys, and, appearing specially and not generally, for the sole purpose of contesting the jurisdiction of this Court, respectfully moves this Court for the entry of an Order, dismissing the Complaint filed against him herein.

As grounds therefor, said Defendant would show this Court that there is lack

of jurisdiction, insufficiency of Process, and insufficiency of service of Process, in that the Complaint and attachments show on their face that Plaintiff is attempting to sue in Florida upon a transaction that occurred in Georgia, between Georgians, and that this Court is therefore without jurisdiction of this Cause.

Further, Defendant would show this Court that he is a resident of the State of Georgia, and that Plaintiff is a resident of the State of Georgia, and, since the Complaint and attachments show that the subject matter was in fact a Georgia transaction, no predicate exists for service of Process upon Defendant in this Cause.

In addition, Defendant would show this Court that this Court lacks jurisdiction over the subject matter, as

neither the Florida Statutes nor the Florida common law provide a basis for suit in Florida for interpretation of or application of legal documents purporting to affix rights jointly between Parties solely from another state, concerning instruments executed in another state, namely, the State of Georgia.

DAVENPORT, JOHNSTON, HARRIS, GERDE & HARRISON

Attorneys for Defendant

I HEREBY CERTIFY that a copy of the above has been mailed to William E. Williams, P. O. Box 5617, Tallahassee, Florida, this 13th day of February, 1976.

By: S/JERRY W. GERDE, ESQ.

406 Magnolia Avenue

Panama City, Florida.

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT, IN AND FOR GULF COUNTY, FLORIDA

CASE NO. 76-15

DIVISION: CIVIL

LAWRENCE E. COOPER,

Plaintiff

v.

JOHN P. PARIS, Ind. & d/b/a PARIS PROPERTIES,

Defendant

AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Comes now defendant, JOHN P. PARIS, Individually and doing business as PARIS PROPERTIES, and submits the Affidavit attached hereto as Exhibit "A" in support of Defendant's motion to dismiss in the above-styled case.

This 6th day of April, 1976.

DAVENPORT, JOHNSTON, HARRIS GERDE & HARRISON

By: S/JERRY W. GERDE

Attorneys for Defendant

HURT, RICHARDSON, GARNER & TODD

By: S/ROBERT B. WEDGE

Attorneys for Defendant

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT, IN AND FOR GULF COUNTY, FLORIDA

CASE NO. 76-15

DIVISION: CIVIL

LAWRENCE E. COOPER,

Plaintiff

v.

JOHN P. PARIS, Ind. & d/b/a PARIS PROPERTIES,

Defendant

STATE OF GEORGIA

COUNTY OF FULTON

A F F I D A V I T

In person appeared before the undersigned officer authorized to administer oaths, JOHN P. PARIS, who on oath states as follows:

(1) That at all times referred to herein he was a resident of the State

Exhibit "A"

of Georgia, and not of the State of Florida, with his residence being in ATlanta, Fulton County, Georgia.

(2) That at all times referred to herein he owned and operated an individual proprietorship known as Paris Properties, located in Atlanta, Fulton County, Georgia. The services engaged in by Affiant and Paris Properties include owning and managing real property, acting as real estate broker in sales of real property and acting as real estate consultant for purchasers and sellers on various types of real estate transactions.

(3) That prior to the real estate transaction which is the subject of the above-styled case, affiant consulted with and advised Lawrence E. Cooper, M.D., with respect to a number of real estate transactions, including at

least six transactions in which he acted as a real estate consultant to Dr. Cooper and at least six transactions in which he acted as the real estate broker. During the course of his business relationship with Dr. Cooper, he was requested by Dr. Cooper to bring to Dr. Cooper's attention parcels of real estate for sale which Dr. Cooper might be interested in purchasing. At all times mentioned herein, Dr. Cooper was also a resident of Atlanta, Fulton County, Georgia, and not a resident of Florida.

(4) That during the summer of 1973, Mr. Lyn Boling of Larwin Mortgage Investors of Atlnata, Georgia, contacted affiant and advised him that the property which is the subject of the above-styled case was for sale. Mr. Boling forwarded to affiant an M.A.I. Appraisal of said property dated May 28, 1973, prepared by

Nolen & associates, INc., and a geological survey of said property.

(5) That affiant telephoned Dr. Cooper for the purpose of bringing said property to his attention. Dr. Cooper informed affiant at that time that he had already heard that this property was for sale and that he was interested in learning more about it. Affiant met with Dr. Cooper and delivered to him the aforesaid M.A.I. Appraisal and geological survey and Dr. Cooper requested affiant to travel to Gulf County, Florida, for the purpose of inspecting the property in question on his behalf. Affiant informed Dr. Cooper at that time that affiant was not licensed under the laws of the State of Florida as a real estate broker and would have to act as Dr. Cooper's personal consultant with respect to said property. Dr. Cooper acknowledged and

understood that fact.

(6) That on August 17, 1973, affiant drove to Panama City, Florida, and on August 18, 1973, he met with Mr. William Grimsley, one of the onwers of said property, and visited the property in the company of Mr. Grimsley. Affiant informed Mr. Grimsley at that time that affiant was not a licensed real estate broker under the laws of Florida, but was representing and acting as a consultant for Dr. Lawrence E. Cooper, who might be interested in purchasing the property.

(7) That affiant returned to Atlanta, Georgia, and met with Dr. Cooper for the purpose of discussing with him the characteristics and general nature of the property in question. Dr. Cooper authorized affiant to prepare a letter proposal to send to Mr. William Grimsley on behalf of Dr. Cooper offering to

purchase the property in question for a certain amount. Affiant did that and after Mr. Grimsley indicated his willingness to accept the price set forth therein, Dr. Cooper engaged the services of the law firm of Arnall, Golden & Gregory, whose Mr. Edward Sprouse proceeded to draw up and negotiate with the sellers of said property the terms of the sales contract for said property.

(8) That Dr. Cooper agreed to pay affiant for all services rendered to Dr. Cooper by affiant as a real estate consultant on the transaction in question, as well as for prior services affiant had rendered to Dr. Cooper, the amount of ten percent (10%) of the purchase price of the property in question.

(9) That after Dr. Cooper's attorneys prepared the sales contract for

the property in question and Dr. Cooper signed said contract in Atlanta, Georgia, affiant personally delivered said sales contract to Messrs. Grimsley, Hilton, and Faircloth of Hilton & Associates, in Panama City, Florida. Affiant returned the same day to Atlanta, Georgia. Following affaint's return to Atlanta, Georgia, Hilton & Associates, in Panama City, Florida. Affaint returned the same day to Atlanta, Georgia. Following affiant's return to Atlanta, Georgia, Hilton & Associates mailed to Mr. Sprouse the sales contract the sales contract in question, which Hilton & Associates had signed and had changed in several respects. Mr. Sprouse made some additional changes to said contract and Dr. Cooper instructed affiant to send the contract to Ronald Feigan, a Florida attorney retained by Dr. Cooper to review

the contract and approved same. Dr. Cooper initialled the changes to the final contract in Atlanta, Georgia. On September 15, 1973, affiant flew to Panama City, Florida, and personally delivered to Hilton & Associates the contract in its final form. Hilton & Associates initialled the changes made by Dr. Cooper's attorneys and affiant returned to Atlanta, Georgia, the same day with the final executed contract.

(10) That the closing of the real estate transaction in question took place in Panama City, Florida, and was handled by Dr. Cooper's attorneys. Dr. Cooper executed all of the closing documents in Atlanta, Georgia, and did not attend the closing of the transaction. Dr. Cooper requested affiant to attend the closing, which he did. However, it was not necessary that affiant be present at said

closing, as affiant did not perform any acts necessary for the closing to take place and did not sign anything at the closing.

(11) That prior to the closing of the transaction in question, affiant and his attorney met with Dr. Cooper and his attorney, Mr. Sprouse, in Atlanta, for the express purpose of discussing how affiant would recieve his consulting fee from Dr. Cooper so that any problems with respect to the Florida Real Estate Brokerage Law would be avoided. Affiant was aware that Dr. Cooper did not have sufficient funds to pay him ten percent (10%) of the purchase price of the property in question in cash at the time of the closing and that a note and fourth mortgage would have to be given by Dr. Cooper to affiant. Subsequent to the meeting among affiant, his attorney, Dr.

Cooper and his attorney, Dr. Cooper's attorney changed the terms of payment for said consulting fee so that Dr. Cooper would execute a note in favor of Hilton & Associates, the sellers, in the amount of $215,070.00, secured by the third mortgage executed by Dr. Cooper in favor of Hilton & Associates, which note would then be assigned by Hilton & Associates to affiant, and Dr. Cooper would deliver to affiant a check in the amount of $100,000.00. Said purchase money note in the amount of $215,070.00 from Dr. Cooper to Hilton & Associates was executed by Dr. Cooper in Atlanta, Georgia. Moreover, the mortgage deed executed on February 8, 1974, by Lawrence E. Cooper in favor of Hilton & Associates expressly provided that said $215,070.00 note was made, executed and delivered in Atlanta, Georgia, for which reason no Florida

documentary stamps were affixed to said note. Said note was then assigned by Hilton & Associates to affiant. Affiant received a check from Dr. Cooper payable to affiant in the amount of $100,000.00. However, there were not sufficient funds in Dr. Cooper's bank account on which said check was drawn to cover that check. Consequently, affiant returned said check to Dr. Cooper, who delivered to affiant a demand note payable by Dr. Cooper to affiant in the amount of $75,000.00 as well as a check in the amount of $25,000.00, a true copy of which is attached hereto as Exhibit "A", showing the same to represent a "consultation fee" on the Gulf County Property. Said $75,000.00 demand note was executed by Dr. Cooper in Atlanta, Georgia, and was delivered to affiant in Atlanta, Georgia.

(12) That the services performed

by affiant in Atlanta, Georgia, for Dr. Cooper in relation to the transactior in question, included, but were not limited to the following: working on a daily basis with Dr. Cooper's attorneys in procuring information for them and attending to details requested by them; daily telephone conversations and numerous meetings with Dr. Cooper and his attorneys with respect to the same; contracting on behalf of Dr. Cooper with Mr. Andrew McColgam, a real estate appraiser, to perform another M.A.I. Real Estate Appraisal on the property in question; setting up an escrow account with the First National Bank of Atlanta, Georgia, for deposit of the earnest money with respect to the transaction in question, as well as subsequent deposits required under extension agreements to the contract; contracting on behalf of

Dr. Cooper to have the land in question surveyed prior to the closing; numerous telephone conversations and meetings with lenders, including, but not limited to, First National Bank of Atlanta, Adair Mortgage Company, C & S Mortgage Company, and Northwest Mutual Life Insurance Company, in an attempt to obtain financing for Dr. Cooper with respect to his purchase of the property in question; initiating contracts on behalf of Dr. Cooper and Law Engineering Testing Company for soil tests which Dr. Cooper had the right to perform under th sales contract in question; working with Dr. Cooper's attorneys in arranging an extension of time on the closing date in order to allow Dr. Cooper more time in which to arrange financing on the subject property; performing no acts within the State of Florida with respect to this

transaction except as otherwise stated above. All dealings between Lawrence E. Cooper, M.D., and affiant took place in Georgia, not Florida. Affiant has not at any time operated, conducted, engaged in or carried on a business venture in the State of Florida.

(14) That affiant has personal knowledge of the facts recited herein, is competent to make this affidavit and gives the same for use by affiant in the above-styled case.

S/JOHN P. PARIS

Sworn to and Subscribed
Before Me, this 6th day
of April, 1976.
S/Elizabeth M. Sanford
[SEAL]
Notary Public
Georgia, State at Large
My Commission Expires Apr. 2, 1977

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

LAWRENCE E. COOPER,

Plaintiff

V.

JOHN P. PARIS, ind. & d/b/a PARIS PROPERTIES,

Defendant

CASE NO. 76-15

O R D E R

This cause coming on before me to be heard on Motion to Dismiss filed by Defendant, John P. Paris, for lack of jurisdiction, insufficiency of process, and insufficiency of service of process; and the Court having duly considered the motion, heard argument of counsel, and reviewed the affidavits and citations of authorities supplied by counsel, it is,

ORDERED that the Defendant's Motion

to Dismiss be, and the same is hereby, denied.

DONE AND ORDERED in Chambers this 22nd day of April, 1976.

S/LARRY G. SMITH

Circuit Judge

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

LAWRENCE E. COOPER,

Plaintiff

V.

JOHN P. PARIS, ind. & d/b/a PARIS PROPERTIES,

Defendant

CASE NO. 76-15

MOTION FOR REHEARING

COMES NOW THE Defendant, JOHN P. PARIS, by and through his undersigned attorneys, and, again appearing specially to challenge jurisdiction, and in accordance with Rule 1.530, Fla.R.Civ.Pro., respectfully moves this Court for a Rehearing of Defendant's Motion to Dismiss, based upon jurisdictional grounds, which was the subject of an Order entered by this Court

on April 22, 1976.

As grounds therefor, Defendant would show this Court that admissable evidence relevant to the question of jurisdiction, insufficiency of process, and insufficiency of service of process appears in the test of the depositions taken inthe above-entitled Cause, of MR. L. CHARLES HILTON, JR. and MR. WILLIAM C. GRIMSLEY, JR., which depositions were not available to the Court at the time of argument on Defendant's Motion To Dismiss, but which were taken on April 20, 1976.

In addition, Defendant respectfully urges that jurisdiction and sufficiency of process and service of process are matters of critical importance to the subsequent course and validity of a Cause, and that the ends of justice would be served by this Court's reconsideration

ot its Order of April 22, 1976, pending a review by the Court of the admissable evidence contained in the aforesaid depositions.

DAVENPORT, JOHNSTON, HARRIS, GERDE & HARRISON

Attorneys for Defendant

I HEREBY CERTIFY that a copy of the above has been mailed to William E. Williams, Esq., P. O. Box 5617, Tallahassee, Florida, this 28th day of April, 1976.

By: S/JERRY W. GERDE, ESQ.

406 Magnolia Avenue

Panama City, Florida

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

LAWRENCE E. COOPER,

Plaintiff CASE NO.

V. 76-15

JOHN P. PARIS, ind. & d/b/a PARIS PROPERTIES,

Defendant

O R D E R

THIS CAUSE coming on before me upon Motion for Rehearing and counsel having agreed to submission of the Motion to the Court without oral argument and the Court having considered the Motion for Rehearing and being of the opinion that the same is not well founded nor proper under Florida Rules of Civil Procedure, it is therefore:

ORDERED that Defendant's Motion for

Rehearing be and the same is hereby denied.

DONE AND ORDERED in Chambers this 5th day of May, 1976.

S/ LARRY G. SMITH,
Circuit Judge

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

LAWRENCE E. COOPER,
Plaintiff

V. Case No.

JOHN P. PARIS, Individually and doing business as PARIS PROPERTIES, 76-15
Defendant

L. CHARLES HILTON, JR., et al.,
Plaintiffs

V. Case No.

LAWRENCE E. COOPER, et al., 76-135
Defendants

FINAL SUMMARY JUDGMENT

This cause having come on for hearing on the motions for summary judgment filed in behalf of Lawrence E.

Cooper in the above styled causes, and also on the motions for summary judgment filed in the above styled casues on behalf of John P. Paris, individually and doing business as Paris Properties, with respect to his claims against Lawrence E. Cooper; and the Court having considered the pleadings in these causes, together with exhibits, affidavits, depositions and admissions on file, the Court makes the following findings and conclusions:

1. Lawrence E. Cooper and John P. Paris, individually and doing business as Paris Properties, are both residents of the State of Georgia. Hilton & Associates is a partnership composed of R. Charles Hilton, Jr., Charles Faircloth, and William C. Grimsley, Jr., all residents of Florida.

2. In the summer of 1973, Paris became aware that the property was for

sale through an acquaintance, Boling, of Atlanta, who had received his information from Grimsley. Boling gave Paris a copy of an appraisal and a geological survey of the property. Paris then contacted Cooper for the purpose of bringing the property to his attention. Cooper was interested. Thereafter Paris took a course of action which ultimately led to the formation of a binding contract between the parties for sale of the land by Hilton & Associates to Cooper, and the transaction was later consummated by transfer of title to Cooper in accordance with the contract.

3. Paris first communicated with Grimsley, one of the owners, by telephone. More than one call was made between Paris and Grimsley concerning the property. In about the middle of August, 1973, Paris arranged by telephone to meet

Grimsley in Panama City, in Day County, Florida, to discuss the property and terms of purchase. Grimsley gave Paris an asking price, which he stated included an allocation of ten percent for a broker's commission. Paris made Grimsley aware that he was registered as a Georgia real estate broker, but was not registered in Florida. He also made known to Grimsley the fact that he was acting for a proposed purchaser from Atlanta. Paris, in his affidavit of April 6, 1976, states that he informed Grimsley of the name of the prospect, Dr. Lawrence E. Cooper, which is not denied. At no time did Paris act in behalf of the sellers.

4. According to plans, Paris met Grimsley in Panama City and the two of them drove to the property south of Port St. Joe, in Gulf County, Florida.

They spent about three hours on the property, walking over it, locating the boundaries, and Paris took numerous photos. Paris and Grimsley spent some six to eight hours together total time on this first visit. Paris then returned to Atlanta, discussed the proposed purchase with Dr. Cooper, and with Cooper's authorization prepared a letter proposal to send to Grimsley offering to purchase the property. Grimsley indicated willingness to accept the price offered by Cooper, and the transaction progressed to the point that Cooper engaged attorneys in Atlanta to prepare a formal sales contract. Paris worked with the attorneys in the usual capacity as a broker, obtaining information and attending to details requested by them.

5. Paris then, probably around mid-September, 1973, telephoned Grimsley

and arranged a meeting for himself with Grimsley, Hilton and Faircloth, in Panama City, to go over the proposal with them. As arranged, Paris did meet with them and at that time presented the proposed contract. Several changes and deletions had to be made before final acceptance by all parties. All discussions and negotiations thereafter concerning the contract were between Grimsley, Paris, Hilton and Dr. Cooper's attorneys. At no time did Grimsley, Hilton or Faircloth ever meet with or discuss the matter with Dr. Cooper, nor did Dr. Cooper visit the property prior to closing, or attend the closing.

6. After all changes had been agreed upon, Paris himself took the final draft of the contract to Panama City to have the latest changes approved and initialed by the sellers. Upon

completion, he then returned to Atlanta with the final executed contract. There were later separate modification agreements between the parties, some of which would have no bearing on the present controversy. However, one agreement prior to closing dealt with changes Paris desired to be made in the provisions concerning the manner in which Paris would be paid his compensation for services in handling the purchase. The contract as executed provided for a fee of $315,070.00, (ten percent of the selling price) to be paid by Paris by the purchaser. The form of payment was to be $100,000.00 cash or certified check payable by Cooper to Paris at closing, and the remaining $215,070.00 to be by promissory note from Cooper to Paris, secured by a mortgage on the property. In an effort to avoid the consequences of

the Florida Real Estate Brokers licensing law Paris had the payment provisions changed, so that the $215,070.00 note would be given by Cooper to Hilton & Associates, and by them assigned without recourse to Paris, payment to be secured by the same purchase money mortgage given by Cooper to the sellers. By the express terms of this note it is enforceable only by foreclosure against the property, with no personal liability whatever against Cooper. Paris received this note, and Cooper's check for $100,000.00 at the closing. By prior arrangement, Paris returned this check to Cooper a few days later, who gave him a check for $25,000.00 (which was cashed), and a demand note for $75,000.00.

7. Paris attended the closing of the sale in Panama City, Florida, in February, 1974. Cooper sent a Mr. Brooks

to the closing with a power of attorney to act in his behalf for the purpose of executing any remaining documents necessary for closing. The notes and mortgage were signed by Cooper in Atlanta, and delivered by Brooks in Panama City, Florida, at the closing.

8. Upon the foregoing facts, the Court is compelled as a matter of law, to find and conclude that Paris acted in this transaction as a real estate broker; that he so acted in the State of Florida in his initial contact with the sellers; his examination of the property; in discussing and negotiating the price and terms of the purchase with the sellers; in assisting in the assembling of the sales contract and obtaining its final execution and approval by the sellers in Florida; by his becoming a party to the contract providing for

payment of a ten percent fee to him out ot the total purchase price paid by the purchaser; and by attending the final closing of the transaction in Florida.

9. This was a transaction involving Florida real estate, Florida sellers, essentially negotiated and completed in the State of Florida, and the compensation due Paris under the terms of the contract was a percentage of the purchase price derived from the sale, the major portion of such compensation evidenced by a promissory note enforceable only by foreclosure on the mortgage on the property sold.

10. Certain factual issues have been pointed out by counsel for Paris, but in this Court's opinion their final resolution would not change the legal conclusions drawn from the facts which the Court deems to be established without

genuine issue. These issues, briefly, are whether or not Cooper was aware of the availability of the Florida property prior to being so informed by Paris; whether or not prior to closing Cooper knew that Paris was not a registered broker under the laws of Florida; and whether or not Cooper and Paris had an understanding that payment of the $75,000.00 note would be made only from the proceeds of sale of the property, or from the proceeds of additional financing secured by Cooper. None of these issues would determine whether or not Paris acted as a Florida real estate broker in contravention of the Florida Statutes.

11. Both the $215,070.00 note, and the $75,000.00 note were made and delivered pursuant to a transaction which is prohibited by Florida Statutes, Sections 475.01, and 475.41. Of the

several cases cited by plaintiff, those that lend the greatest support to this conclusion are First Equity Corp. v. Riverside Real Estate Investment Trust, 307 So. 2d 866 (DCA 3rd, 1975), and Hanks v. Hamilton, 339 So. 2d 1122 (DCA 4th, 1976).

The cases cited to the Court by counsel for Paris are: Land Co. of Florida v. Fetty, 15 F. 2d 942 (CCA 5th, 1926); Pearce v. Previews, Inc., 201 F. 2d 385 (CCA 5th, 1953); Pokress v. Tisch Florida Properties, Inc., 153 So. 346, (DCA 3rd, 274 So. 2d 581 (DCA 3d, 1973); Morgan v. Glassman, 285 So. 2d 673 (DCA 3rd, 1973); Dorothy K. Winston and Co. v. Town Heights Development, 376 F. Supp. 1214 (Dis. Ct., D.C., 1974); and Kagan v. Garfinkle, 312 So. 2d 778 (DCA 3rd, 1975). None of these cases hold that conduct comparable to that of Paris in

this case is permissible under the laws of Florida. Nor is there any case cited, in this Court's opinion, that would offer any sound basis for refusing to apply the prohibition of the Florida Statutes above cited.

12. Cooper's claim for reimbursement of $37,904.00 ($25,000.00 on principal, plus payments on interest) paid to Paris has not been established to the point that the Court can state with any degree of assurance whether Cooper should recover that sum, or whether judgment should be entered for Paris on this issue. The Court therefore determines that there are issues to be resolved with respect to this claim, and reserves jurisdiction for entry of a supplemental final judgment on this issue.

From the foregoing, the Court finds

that there is no genuine issue as to any material fact concerning the claims and issues with respect to the $215,070.00 note, and the $75,000.00 note, and that Lawrence E. Cooper is entitled to a judgment on these issues as a matter of law; and it is, therefore,

ORDERED AND ADJUDGED:

1. That John P. Paris' motions for summary judgment be, and the same are hereby, denied.

2. That the motions for summary judgment filed on behalf of Lawrence E. Cooper, except as to his claim for recovery of $37,904.00, be, and the same are hereby, granted.

3. That the promissory note dated February 8, 1974, in the principal amount of $215,070.00 made payable to Hilton & Associates and endorsed without recourse to John P. Paris, and the

promissory note dated February 12, 1974, in the principal amount of $75,000.00 made payable to John P. Paris, be, and they are each hereby, declared unenforceable, cancelled and of no force and effect.

4. The Court reserves jurisdiction of this cause and of the parties hereto, for the purpose of determining the amount of costs, if any, to be taxed against any party, and for the purpose of further proceedings with respect to Cooper's claim for reimbursement of the sum of $37,904.00 received by John P. Paris.

DONE AND ORDERED in Chambers this 25th day of February, 1977, at Port St. Joe, Gulf County, Florida.

S/LARRY G. SMITH, Circuit Judge

Copies furnished to:

William E. Williams
Post Office Box 5617
Tallahassee, Florida

Jerry W. Gerde
405 Magnolia Avenue
Panama City, Florida

L. Charles Hilton, Jr.
Post Office Box 2462
Panama City, Florida

Dean Bunch
Post Office Box 1170
Tallahassee, Florida

Cass D. Vickers
Post Office Box 1876
Tallahassee, Florida

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

JULY TERM, A.D. 1977

JOHN P. PARIS,
Appellant

v.

L. CHARLES HILTON, JR., et al.,
Appellees

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED.

CASE NO. FF-470

Opinion filed November 18, 1977.

An interlocutory Appeal from the Circuit Court for Gulf County. Larry G. Smith, Judge.

Jerry W. Gerde of Davenport, Johnston, Harris, Gerde & Harrison for Appellant.

William E. Williams of Mahoney, Hadlow & Adams for Appellees.

RAWLS, Acting Chief Judge

By this interlocutory appeal, Paris seeks review of an adverse final summary judgment granting the rescission and cancellation of two promissory notes held by Paris. The trial court's basis for granting the summary judgment was its finding that the notes were given as consideration for Paris's services as a real estate broker within the State of Florida at a time that he was not registered as a Florida real estate broker pursuant to Chapter 475, Florida Statutes.

Paris and appellee Cooper are both residents of the State of Georgia. In mid-1973, Paris, a licensed real estate broker in Georgia, learned that certain Gulf County, Florida, acreage was on the market. Paris followed an energetic course of action that ultimately led to

the formation of a binding contract for sale of the land between appellees Hi.con & Associates and Cooper. Paris's activities in conjunction with the sale of this property included numerous telephone calls from Atlanta to Panama City, Florida, for the purpose of discussing the real estate and the terms of its sale with one of the owners; a one day visit to the property which included three hours of "walking" the land and photographing it; preparing Dr. Cooper's written offer to purchase, as well as working with Cooper's attorneys on the sales contract; returning to Panama City for further discussions and negotiations concerning the contract; and attending the closing of the sale in Panama City during February of 1974.

Paris received his $315,070 commission in the form of a $215,070 note

secured by the real property and a check for $100,000 from Cooper. By prior arrangement, Paris returned the $100,000 to Cooper and, in turn, was given a check for $25,000 and a demand note for $75,000. Cooper subsequently refused to honor the notes and sought their rescission and cancellation.

The services performed by Paris clearly fall within the provisisions of Section 475.01(2), Florida Statutes, as being duties to be performed by real estate brokers or salesmen. It is undisputed that Paris was not licensed either as a broker or as a salesman in the State of Florida. While it is true that the purpose of the Real Estate Licensing Act is to protect the public from being forced to deal with dishonest or unscrupulous real estate operators, rather than to permit one party to gain

unconscionable advantage by avoiding a just obligation which he has contracted to pay, (1) the statute also protects the public in general from untrained and unsupervised real estate operators. To this end, the legislature of this state has decreed that contracts to pay the commissions of real estate brokers or salesmen, who are not registered as such in the State of Florida at the time such services are rendered, are entirely void as a matter of public policy, and the courts have rulesd that recovery may not be had either under the contract or under the theory of quantum meruit.(2)

The judgment appealed is AFFIRMED.

SMITH and ERVIN, JJ., CONCUR

---

(1) Geneva Inv. Ltd. v. Trafalgar Developers Ltd., 274 So.2d 581 (Fla. 3rd

DCA 1973), cert.disch. 285 So.2d 593 (Fla. 1973), appeal after remand 305 So.2d 274 (Fla. 34d DCA 1974). Paris argues strongly that because he is licensed to practice in Georgia, the citizens of Florida are not exposed to the dangers that the statute seeks to restrict. Paris argues, just as strongly, that it is inequitable and unconscionable to allow Cooper to avoid his contractual obligation to pay him his commission for services rendered.

(2) Bradley v. Banks, 260 So.2d 256 (Fla. 3rd DCA 1972); Wegmann v. Mannio, 253 F.2d 627 (5th Cir. 1953), cert.den. 358 U.S. 824, 3 L.Ed.2d 63, 79 S.Ct. 37 (1958).

IN THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

JULY TERM, A.D. 1977

JOHN P. PARIS,

Appellant,

V. Case No. FF-470

L. CHARLES HILTON, JR.,

et al.,

Appellee

PETITION FOR REHEARING

COMES NOW the Appellant, JOHN P. PARIS, by and through his undersigned attorneys, and, in accordance with Rule 3.14, Fla.App.R., respectfully prays that this Court will enter an Order, allowing a rehearing of this Cause.

As grounds thereform, Appellant respectfully represents to the Court as follows, to-wit:

A. This Court, in its Opinion

of November 18, 1977, ruled that, because JOHN PARIS was not licensed as a broker in Florida, he was precluded from recovering on two Promissory Notes, under authority of Section 475.01(2),F.S.

B. Implicit in the Court's ruling was the apparent determination that the Promissory Notes constituted a "real estate commission;" obviously, counsel for PARIS has been ineffective in our attempts to communicate to this Court that JOHN PARIS was--in actuality--acting as a consultant to Dr. Cooper--and that the Notes were part of a consultant's fee. Even Cooper described (on the check "stub") the initial $25,000.00 payment to PARIS as: "Consultation Fee-Gulf County Property." (Pg.79, Appendix of Appellant).

C. In addition, uncontradicted is the testimony by JOHN PARIS,

describing his previous, intimate involvement with Dr. Cooper in at least 12 real estate transactions (pp. 72 and 73, Appendix of Appellant). Would Dr. Cooper have called on JOHN PARIS again and again, in 12 (or more) real estate transactions, if JOHN PARIS was just a broker, operating independently and at "arms length"? A contrary conclusion, we respectfully submit, is inescapable; JOHN PARIS was acting as a trusted real estate consultant--not as the "broker" whose conduct was the intended focus by the Florida Legislature in adopting Section 475, F.S.

D. Counsel for JOHN PARIS has also been ineffective, in our effort to point out to this Court that the outer boundary of the populace sought to be regulated/governed by the Florida Legislature was the buying public in

Florida, and the real estate brokers in Florida. Is it seriously contended that the Florida Legislature intended to regulate/govern Georgians who might buy property located in Florida, or to regulate/govern Georgia brokers who might sell property located in Florida? Rather, it seems more reasonable that each of the 50 states is authorized to regulate/govern affairs and relations and matters between its citizens; we agree fully that our Florida Legislature intended to regulate Floridians selling real estate, and--equally--to protect people in Florida buying real estate. We are confident that the Legislature of each state intends the same ambit of regulation and protection.

E. Accordingly, if Dr. Cooper had a genuine (or, for that matter, an imagined) complaint of unscrupulous or

dishonest or incompetent conduct by JOHN PARIS, the Georgia Real Estate Commission is located less than a mile from the Atlanta offices of JOHN PARIS, and less than three miles from the Atlanta hospital owned by Dr. Cooper. Again, therefore, we respectfully submit that a situation involving a Georgian dealing with a Georgian--in Georgia--is beyond the outer boundaries of the public policy manifested by the Florida Legislature in adopting Section 475, F.S. Frankly, no other interpretation of Section 475 could explain the decision by the Third District Court of Appeal in Pokress -vs- Tisch Florida Properties, Inc., 153 So2d 346 (3rd.Dist.1963), or in Geneva Inv. Ltd. -vs- Trafalgar Developers, Ltd., 274 So2d 581, and 305 So2d 274 (1974).

F. Finally, counsel's failure heretofore is most apparent in the

language adopted by this Court in its Opinion on Page 2 in the concluding paragraph; this Court wrote, there, that:

> "While it is true that the purpose of the Real Estate Licensing Act is to protect the public from being forced to deal with dishonest or unscrupulous real estate operators. . . ."

We would be in full agreement with that language if it were to contain the additional words underscored below, to-wit:

> "While it is true that the purpose of the Real Estate Licensing Act is to protect the public from being forced to deal <u>in Florida</u> with dishonest or unscrupulous real estate operators . . ."

G. These two additional words would make this Court's language "square"

with the very wording of Section 475.01(2) and would, therefore, enable the Court to perhaps focus on this critically important fact that JOHN PARIS' dealings with Cooper were in Atlanta, Georgia.

WHEREFORE, Appellant JOHN P. PARIS respectfully prays that this Court will rehear, and reconsider, its Opinion filed November 18, 1977.

Respectfully submitted,

DAVENPORT, JOHNSTON, HARRIS, GERDE & HARRISON

Attorneys for Appellant

I HEREBY CERTIFY that a copy of the above has been mailed to William E. Williams, Esq., P. O. Box 5617, Tallahassee, Florida, this 1st day of December, 1977.

BY: S/JERRY W. GERDE, ESQ.

406 Magnolia Avenue

Panama City, Florida

904/763-8421

IN THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

JULY TERM, A.D. 1977

JOHN P. PARIS,

Appellant,

V. Case No. FF-470

L. CHARLES HILTON, JR.,

et al.,

Appellee

O R D E R

PETITION FOR REHEARING having been considered,

IT IS ORDERED that the Petition is hereby denied.

BY ORDER OF THIS COURT dated this 22nd day of December, A.D. 1977.

ACTING CHIEF JUDGE JOHN S. RAWLS,

JUDGE ROBERT P. SMITH, JR.; and

JUDGE RICHARD W. ERVIN, III

SUPREME COURT OF FLORIDA

MONDAY, JULY 31, 1978

JOHN P. PARIS,

Petitioner

V. Case No. 53,241

L. CHARLES HILTON, JR., DISTRICT COURT

ET AL., OF APPEAL, FIRST

Respondents DISTRICT

FF-470

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ENGLAND, C.J., BOYD, SUNDERBERG, HATCHETT

and ALDERMAN, JJ., Concur

cc: Hon. Raymond E. Rhodes, Clerk

Hon. George Y. Core, Clerk

Hon. Larry G. Smith, Judge

Jerry W. Gerde, Esq. of

Davenport, Johnston, Harris,

Gerde & Harrison

William E. Williams, Esq. of

Mahoney, Hadlow & Adams

SUPREME COURT OF FLORIDA

JOHN P. PARIS,
Petitioner

v.

L. CHARLES HILTON, JR., et al.,
Respondents

Case No. 53,241
DISTRICT COURT OF APPEAL, FIRST DISTRICT
FF-470

PETITION FOR REHEARING

COMES NOW the Petitioner, JOHN P. PARIS, by and through his undersigned attorneys, and, in accordance with Rule 9.330, Fla.App.R., respectfully moves this Court for the entry of an Order, authorizing a rehearing of the decision reflected in the Order of this Court dated July 31, 1978, denying the Petition for Writ of Certiorari, filed on behalf of the said JOHN P. PARIS.

As grounds, Petitioner respectfully

alleges:

(1) The Opinion of the District Court of Appeal has regional, and perhaps national, importance, in view of its impact on business and commerce among Florida and all 49 other states;

(2) The Opinion of the District Court of Appeal will restrain and hamper business and commerce between and among Florida and her sister states; no businessmen, manager, factor, agent or realtor outside the State of Florida would safely be able to handle his, or his principal's, property, unless a Florida real estate broker is hired, if the Opinion of the District Court of Appeal is allowed to stand; the anomalies, too numerous to mention, come quickly to mind, in this day of comparatively sophisticated real estate holdings, management and administration;

(3) In denying our Petition for Writ of Certiorari on July 31, 1978, it cannot have been this Court's intention to allow this shadow on interstate commerce and business to exist;

(4) Heretofore, it has been a signal failure on our part to adequately illustrate the chilling impact on trade and commerce that will inevitably occur, if the Opinion of the District Court of Appeal is allowed to stand.

WHEREFORE, Petitioner, JOHN P. PARIS, respectfully prays that this Court will enter its Order, authorizing a rehearing regarding the Petitioner For Writ of Certiorari filed earlier herein.

DAVENPORT, JOHNSTON, HARRIS, GERDE & HARRISON
Attorneys for Petitioner

I HEREBY CERTIFY that copies of the above have been mailed to Hon. Raymond E.

Rhodes, Clerk, First District Court of Appeal, Supreme Court Building, Tallahassee, Fl., and to William E. Williams, Esq., P. O. Box 5617, Tallahassee, Fl., this 9th day of August, 1978.

By: S/ JERRY W. GERDE, ESQ.
406 Magnolia Avenue
Panama City, Florida
904/763-8421

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, NOVEMBER 8, 1978

JOHN P. PARIS,

Petitioner

v. CASE NO. 53,241

L. CHARLES HILTON, JR., DCA Case No.

ET AL., Respondents FF-470

On consideration of the petition for rehearing filed by attorneys for petitioner, and reply thereto,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

cc Hon. Raymond E. Rhodes, Clerk
Hon. George Y. Core, Clerk
Hon Larry G. Smith, Judge
Jerry W. Gerde, Esquire of
Davenport, Johnston, Harris,
Gerde & Harrison
Terrance E. Schmidt, Esquire of
Mahoney, Hadlow & Adams

§475.01 Fla. Code Ann., §§ (1) and (2)

DEFINITION OF TERMS USED IN CHAPTER

(1) This chapter may be referred to in any legal proceeding as the "Real Estate License Law."

(2) Every person who shall, in this state, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraise, auction, sell, exchange, buy or rent, or offer, attempt or agree to appraise, auction, or negotiate the sale, exchange, purchase or rental of any real property, or any interest in or concerning the same, including mineral rights or leases; or who shall advertise or hold out to the public by any oral or printed solicitation or representation

that such person is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing or renting real estate, or interests therein, including mineral rights or leases, of others; and every person who shall take any part in the procuring of sellers, purchasers, lessors or lessees of the real property, or interests therein, including mineral rights or leases, of another; or who shall direct or assist in the procuring of prospects, or the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who shall receive, expect, or be promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who are members of partnerships or officers or directors of corporations engaged in

performing any of the aforesaid acts or services; each and every such person shall be deemed and held to be a "real estate broker" or a "real estate salesman," as hereinafter classified, unless said person when performing the act or acts herein specified shall be acting as an attorney-in-fact for the purpose of the execution of contracts or conveyances only, or as an attorney-at-law within the scope of his duties as such, or when acting as the administrator, executor, receiver, trustee, or master under or by virtue of an appointment by will or by order of a court of competent jurisdiction, or as trustee under a deed of trust, or under a trust agreement, the ultimate purpose and intent whereof shall be charitable, philanthropic, or providing for those having a natural right to the bounty of

the donor or trustor; nor shall the term broker or salesman be applied to a person who shall deal with property in which he is a part owner, unless said person shall receive a larger share of the proceeds or profits from the transaction than his proportional investment therein would otherwise justify, such excess share being directly or indirectly the result of the service of buying, selling, exchanging or leasing said property; nor shall said terms be applied to one officer of every corporation engaged in the sale of its own properties who shall be its president unless otherwise provided in its charter or by-laws, if said corporation shall not otherwise be classed as a real estate broker or a salesman.

§48.193, Fla. Code Ann.

Acts subjecting persons to jurisdiction of courts of state

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following:

(a) Operates, conducts, engages in, or carries on a business or business venture in this state or has an office or agency in this state.

(b) Owns, uses or possesses any real property within this state.

(d) Contracts to insure any person, property, or risk located within

this state at the time of contracting.

(e) With respect to proceedings for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causes injury to persons or property within this state arising out of an act or omission outside of this state by the defendant, provided that at the time of the injury either:

1. The defendant was engaged in

solicitation or service activities in this state which resulted in such injury; or

2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade or use and the use or consumption resulted in the injury.

(g) Breaches a contract in this state by failing to perform acts required by the contract to be performed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts f this state as provided in this section may be made by personally serving the process upon the defendant outside this state, as provided in §48.194. The service shall have the same

effect as if it had been personally served within this state.

(3) Only causes of action arising from acts or omissions enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section, unless the defendant in his pleadings demands affirmative relief on other causes of action, in which event the plaintiff may assert any cause of action against the defendant, regardless of its basis, by amended pleadings pursuant to the rules of civil procedure.

(4) Nothing contained in this section shall limit or affect the right to serve any process in any other manner now or hereinafter provided by law.

Added by Laws 1973, c. 73-179, §1, eff. July 1, 1973.

§48.181 Fla. Code Ann.

(1) The acceptance by any person or persons, individually, or associated together as a copartnership or any other form or type of association, who are residents of any other state or country, and all foreign corporations, and any person who is a resident of the state and who subsequently becomes a nonresident of the state or conceals his whereabouts, of the privilege extended by law to nonresidents and others to operate, conduct, engage in, or carry on a business or business venture in the state, or to have an office or agency in the state, constitutes an appointment by the persons and foreign corporations of the secretary of state of the state as their agent on whom all process in any action or proceeding against them, or any of them, arising out of any transaction

or operation connected with or incidental to the business or business venture may be served. The acceptance of the privilege is signification of the of the agreement of the persons and foreign corporations that the process against them which is so served is of the same validity as if served personally on the persons or foreign corporations.

(2) If a foreign corporation has a resident agent or officer in the state, process shall be served on the resident agent or officer.

(3) Any person, firm or corporation which sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers or distributors to any person, firm or corporation in this state shall be conclusively presumed to be operating,

conducting, engaging in or carrying on a business venture in this state.

28 U.S.C.A. §1257

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution,

treaties or laws of the United States, or where any title, right privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

UNITED STATES CONSTITUTION

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

. . . .

Article 1, §8, United States Constitution

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes;

. . . .

PROMISSORY NOTE

Payable in 15 total installments: (10 installments of interest only and 5 installments of principal and interest). $215,070.00 Atlanta, Georgia February 8, 1974

FOR VALUE RECEIVED, I promise to pay to Hilton and Associates, a partnership, consisting of L. Charles Hilton, Jr., Charles E. Faircloth and William C. Grimsley, Jr. the principal sum of TWO HUNDRED FIFTEEN THOUSAND SEVENTY AND 00/100 DOLLARS ($215,070.00) in lawful money of the United States of America, payable at: 3130 Maple Drive, N.E., Suite 1, Atlanta, Georgia, 30305, or such other place as the holder hereof may from time to time designate in writing, together with interest thereof from date, at the rate of six (6%) per cent, per annum, payments of principal

and interest to be made as follows:

Years	Principal	Interest
1-10	None	$12,904
11	$43,014	12,094
12	43,014	10,323
13	43,014	7,742
14	43,014	5,161
15	43,014	2,580

All payments shall be due and payble on the respective annual anniversary date of the date first above set forth.

Each installment, when paid, shall be applied first to the payment of interest accrued on unpaid principal, and the residue thereof shall be credited on the principal. The indebtedness evidenced by this Note may be prepaid, either in whole or in part, without any penalty whatsoever (other than accrued interest on the amount so prepaid) at any

time.

All partial prepayments of principal shall be applied cumulatively toward the principal portion of installments next due. Prepayments of principal shall be accompanied by interest at said rate on the amount of principal so prepaid, computed from the last regular installment date or the date of this NOte, whichever is the most recent. If on any subsequent regular installment payment date no principal is payable due to previous partial prepayments being cumulatively applied, interest on the unpaid principal balance shall be paid, irrespectively.

Any payment of principal or interest which is not made when due, as herein provided, shall bear interest at the rate of nine (9%) per cent, per annum until paid.

This note is secured by a mortgage, bearing even date herewith, executed by the undersigned in favor of the Payee herein, conveying the property described in Exhibit A, attached hereto.

Reference is made to said mortgage for any provision concerning notice prior to acceleration of this indebtedness; any such provision shall be deemed incorporated herein. The holder of this note shall have the optional right to declare the amount of the total unpaid balance hereof to be due and forthwith payable in advance of the maturity date of any installment as fixed herein, upon the failure of the maker to pay, when due, any one of the installments hereon, or to comply with and perform any condition or covenant contained in the mortgage securing this note. Forbearance to exercise this option with respect to

any failure or breach of the maker shall not constitute a waiver of the right as to any subsequent failure or breach.

Time is of the essence, and in case this note is collected by law or through an attorney at law, or under advice therefrom the undersigned agrees to pay all costs of collection, including reasonable attorney's fees.

Notwithstanding any of the provisions of the mortgage securing payment of this NOte to the contrary, and notwithstanding any of the provisions of this NOte to the contrary, Payee covenants and agrees with Maker that in the event that the Payee should at any time take action to enforce the collection of the indebtedness due him or them, as evidenced by this Note, he or they will first proceed by foreclosure of the mortgage instead of instituting suit

upon the Note, and in the event that as a result of said foreclosure and the sale of the property herein described, a lesser sum is realized from the sale of the security than the amount then due and owing upon said NOte or pursuant to the provisions of the mortgage, said Payee will never institute any action, suit, claim, or demand in law or in equity against said Maker or any assignee of Maker or joint venturer with Maker for or on account of such deficiency, provided however, that nothing in this paragraph contained shall in any way affect or impair the lien of the mortgage to secure debt or any representation or warranty of title made herein by the Maker, all of which shall remain in full force and inure to the benefit of the Payee and to any insurer of the title of the premises.

The expression hereinabove that "Payee

will first proceed by foreclosure of the mortgage instead of instituting suit upon the Note" shall not be deemed to deny payee the power of sale accorded in the mortgage or restrict Payee at any time in the exercise of that right or any right herein provided to enforce the mortgage as to the security given to secure same.

It is the intention of the Maker of this Note and the understanding of the Payee of this Note which shall be binding upon all subsequent holders and transferees that the liability of the Maker of this Note is limited to the security encumbered by the mortgage securing payment of this Note and that the Maker hereof shall not be held personally responsible for any payment of principal, interest, costs or attorneys' fees to payee and his or their assigns and subsequent holder of this Note.

A default under the Mortgage securing this Note or under the note of even date in the principal amount of _____ payable to Hilton & Assocaites and executed by the maker hereof shall constitute a default hereunder.

The undersigned and all endorsers or other parties to this note hereby waive presentment, demand for payment, protest and notice of non-payment.

Given under the hand and seal of each party.

S/LAWRENCE E. COOPER, (SEAL)

LAWRENCE E. COOPER, M.D.

PAY TO THE ORDER OF:

John P. Paris d/b/a Paris Properties

without recourse.

Hilton & Associates

by: S/L. Charles Hilton, Jr.

By: S/Charles E. Faircloth

By: S/William C. Grimsley, Jr.

PROMISSORY NOTE

$75,000 Atlanta, Georgia

February 12, 1974

On demand, the undersigned promises to pay to John P. Paris, d/b/a Paris Properties, or order, the sum of Seventy-Five Thousand Dollars with interest at the rate of 6% per annum from the date hereof, at 3130 Maple Drive, N.E., Atlanta, Georgia.

If this note is not paid on demand, the undersigned shall pay all costs of collection including reasonable attorneys' fees incurred by the holder in enforcing such collection.

S/ LAWRENCE E. COOPER

Lawrence E. Cooper

POINTS ON APPEAL

POINT ONE

THE TRIAL COURT ERRED IN ENTERING ITS FINAL SUMMARY JUDGMENT BECAUSE THE RECORD REFLECTED THAT THERE WERE GENUINE ISSUES OF MATERIAL FACT WHICH HAD NOT BEEN RESOLVED.

POINT TWO

THE TRIAL COURT ERRED IN ENTERING ITS FINAL SUMMARY JUDGMENT, IN THAT IT IS CONTRARY TO THE LAW OF FLORIDA, BECAUSE IT APPLIES THE LAW OF FLORIDA TO PROMISSORY NOTES WHICH SHOULD BE CONSTRUED ACCORDING TO THE LAW OF GEORGIA.

POINT THREE

THE TRIAL COURT ERRED IN ENTERING ITS FINAL SUMMARY JUDGMENT BECAUSE, CONTRARY TO THE LAW OF FLORIDA, THE TRIAL COURT FAILED TO STRICTLY CONSTRUE A PENAL STATUTE.

POINT FOUR

THE TRIAL COURT ERRED IN ENTERING ITS FINAL SUMMARY JUDGMENT, IN THAT IT HAS FAILED TO PROPERLY CONSTRUE AND APPLY THE FLORIDA REAL ESTATE LICENSE LAW, FOR THE PURPOSE OF PROTECTING THE PUBLIC FROM UNTRAINED OR UNSUPERVISED REAL ESTATE OPERATORS.

POINT FIVE

THE TRIAL COURT ERRED IN ENTERING ITS FINAL SUMMARY JUDGMENT, IN THAT IT IS CONTRARY TO THE LAW OF FLORIDA, BECAUSE SAID FINAL SUMMARY JUDGMENT WOULD ENABLE ONE PARTY TO GAIN AN UNCONSCIONABLE ADVANTAGE BY AVOIDING A JUST OBLIGATION WHICH HE HAD CONTRACTED TO PAY.

POINT SIX

THE TRIAL COURT ERRED IN ENTERING ITS FINAL SUMMARY JUDGMENT AND ITS SUBSEQUENT ORDER DENYING MOTION FOR REHEARING, BECAUSE THE MOTION FOR REHEARING

SUBMITTED ADDITIONAL EVIDENCE MATERIAL TO THE ISSUES OF THE CASE.

"PETITION POINT FIVE"

THE DECISION BY THE TRIAL COURT AND THE FIRST DISTRICT COURT WORKS A TAKING OF PARIS' PROPERTY WHICH IS PROSCRIBED BY THE FLORIDA AND U.S. CONSTITUTIONS.

I. INTRODUCTION

No compelling public policy is being served, nor public benefit obtaine, that justifies the destruction of PARIS' property (his note and his mortgage).

II. NOTE AND MORTGAGE ARE "PROPERTY"

Both the Florida and the U.S. Constitutions have provided protection for personal, as well as real, property from summary or arbitrary alteration by Trial Courts.

> "All natural persons are equal before the law and have inalienable rights, among with are the right to . . . possess and protect property . . . "

Constitution of the State of Florida, Article I, Sect. 2

Our Florida Supreme Court has, further, held that a mortgage is indeed entitled to constitutional protection:

> "While in this state it is held that a mortgage does not convey the legal title or right of possession, but merely constitutes a specific lien on the property therein described [citation], such lien is itself a species of intangible property, of which the holder cannot be deprived without due process . . . "

Seaboard All-Florida RY. v. Leavitt, et al., 141 So2d 886 at 889 (S.Ct.1932).

And, in spite of some disturbing contemporary trends, rights in property continue to be entitled to protection in

our Florida courts:

> "It has long been recognized that the rights in property are basic civil rights."

Corn v. State, 322 So2d 4 at 7 (S.Ct.1976)

In Corn, supra., the Supreme Court even went further and held that the Courts have a duty to protect property rights:

> "While we have many regulatory measures protecting civil rights of citizens, we also have constitutional duty to protect rights of property and the business community."

Corn v. State, supra.

III. CONCLUSION

Thus, the Trial Court has overlooked these fundamental guarantees in both Constitutions, and, instead, has

chosen to judicially extend Ch. 475 to apply to Georgians, and to transactions between Georgians. In doing this, the Trial Court has crushingly deprived JOHN PARIS of his ". . . property . . ." (U.S. Constitution, Art. XIV), and denied him the right ". . . to be rewarded for industry . . ." (Fla. Constitution, Art. I).

These results can hardly have been consciously intended by the First District Court, and should therefore be reversed.

Supreme Court, U. S.
FILED
APR 7 1979
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

JOHN P. PARIS,

Petitioner

v.

LAWRENCE E. COOPER, et al.,

Respondents

Case No. 78-1213

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF FOR RESPONDENT IN OPPOSITION
AND APPENDIX

GARY P. SAMS, ESQUIRE
MAHONEY HADLOW & ADAMS
Post Office Box 5617
Tallahassee, Florida 32301

IN THE SUPREME COURT OF

THE UNITED STATES OF AMERICA

JOHN P. PARIS,

Petitioner,

v.

LAWRENCE E. COOPER, et al.,

Respondents.

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PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion and order of the Florida Circuit Court (App. D of Petition) is unreported. The unanimous opinion of the Florida First District Court of Appeal affirming the Circuit Court (App. H of Petition) is reported at 352 So. 2d 534 (Fla. DCA 1978). The order of the Supreme Court of Florida denying the Petition for Writ of Certiorari to the District Court of Appeal (App. K of Petition) is unreported.

JURISDICTION

Petitioner contends that this Court has jurisdiction pursuant to 28 U.S.C. § 1271(3) (1970). As Respondent will demonstrate in Section I of his argument, Petitioner failed to preserve his constitutional claims in the

Florida appellate courts. This Court accordingly lacks certiorari jurisdiction over the federal constitutional claims asserted in the Petition.

QUESTIONS PRESENTED

I

Jurisdiction

Whether the Court has jurisdiction to review the federal constitutional claims asserted in the Petition pursuant to 28 U.S.C. § 1257(3)(1970).

II

The Merits

Whether, in the event the Court finds that it has jurisdiction to consider Petitioner's constitutional claims, the State of Florida's exercise of jurisdiction over the person of Petitioner was consistent with the due process clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISION

To the extent that the Court may properly review the constitutional claims asserted, the due process clause of the Fourteenth Amendment is implicated, and is set forth in the Petition at pp. 6-7.

STATE STATUTORY PROVISION

Florida's "long-arm jurisdiction statute", Florida Statutes, 48.193, pursuant to which jurisdiction over the person of Petitioner was asserted, is set forth in Appendix O of the Petition.

STATEMENT OF THE CASE

Respondent sets forth the salient facts of this case, and its procedural history, because of inaccuracies in

the Petition[1].

A. The Proceedings Below

The proceedings in the lower court began in January 1976 when Respondent ("Cooper") brought suit against Petitioner ("Paris") in the Circuit Court for Gulf County, Florida. (App. of Pet. A) At the time of the suit Paris was a Georgia resident (App. of Pet. C, at 3-4).

In mid-1973 Paris had acted as Cooper's real estate broker in the acquisition of a large tract of real property in Gulf County, Florida, and

[1] Reference to Petitioner's Appendix will be indicated by the letters "App. of Pet.", followed by the section and page; e.g., (App. of Pet O at 2-3). References to Respondent's Appendix will be indicated by the letters "App. of Respond.", followed by the section and page, e.g. (App. of Respond. at 2-3).

had received a cash payment and two promissory notes as compensation for his services. (App. of Pet. C and G, at 1-13) Cooper's 1976 complaint sought cancellation and recission of these two notes and restitution of the money he had paid to Paris (App. of Pet. A) Cooper's action was founded on the theory that Paris was not entitled to compensation because he was not licensed to act as a real estate broker by the State of Florida, where the property was located and where the majority of the negotiations for the purchase of the property took place. (Id.) Under the Florida Real Estate License Law, Florida Statutes, Chapter 475 (1977), it is unlawful for a person not licensed as a broker or salesman to seek or obtain compensation

for real estate brokerage services[2].

Paris initially moved to dismiss the complaint for lack of personal jurisdiction. (App. of Pet. B) The Circuit Court denied the motion. (App. of Pet. D) Paris then filed an answer (App. of Respond. E) and a counterclaim (App. of Respond. E) seeking to enforce the notes in dispute and and to foreclose a partial assignment of mortgage given to secure payment of the larger of the two notes.

Cooper's action against Paris was still pending when the holders of the purchase money mortgage given by Cooper when he purchased the Gulf

[2]Fla. Stat. §§ 475.41-475.43, 475.48 (1977). See generally First Equity Corp. of Fla. v. Riverside Real Estate Investment Trust 307 So. 2d 866 (Fla. DCA 1975).

County property brought an action to foreclose their mortgage, naming both Cooper and Paris as defendants. Paris and Cooper each cross-claimed against the other seeking relief identical to that which they were seeking in the action originally brought by Cooper (Pet. Writ of Cert. at 10-11).

The two cases were subsequently consolidated and set for hearing before the Circuit Court on cross-motions for summary judgment filed by Cooper and Paris. (App. of Pet. G) The Circuit Court entered summary judgment for Cooper on his claim for rescission of the notes and denied summary judgment on his claim for restitution. (Id.) The Circuit Court's Order granting summary judgment on the question of rescission was predicated on the theory that Paris's extensive activities in

Florida in connection with the acquisition of the Gulf County property constituted the performance of real estate brokerage services as a matter of law. (Id. at 9-10) The Court also held that because Paris was not licensed by the State of Florida the notes given by Cooper as compensation for Paris's services were void. (Id.)

After motions for rehearing were denied, Paris instituted an interlocutory appeal of the trial court's order to the District Court of Appeal. Paris did not assert his argument that the Circuit Court lacked jurisdiction in either his assignment of errors or his brief. (App. of Pet. VI; App. of Respond.C) The Court of Appeal affirmed the Circuit Court. (App. of Pet. H) Raising only the state law questions addressed by Paris's appeal, the Court

of Appeal concluded that the "services provided by Paris clearly fall within the provisions of Section 475.01(2), Florida Statutes, as being duties to be performed by real estate brokers or salesmen." 352 So. 2d at 535. Contracts to pay real estate commissions to unlicensed persons, the Court reasoned, were void as a matter of law and it therefore followed that the two promissory notes held by Paris were not enforceable and were properly cancelled by the Circuit Court. (Id.)

Paris sought certiorari to the Supreme Court of Florida (App. of Pet. K), invoking that Court's discretionary jurisdiction to review the decision of a Court of Appeal that is in direct conflict with the decision of another Court of Appeal or the Supreme

Court[3]. (App. of Respond.) Again Paris did not raise his claim that the Court lacked personal jurisdiction. The Supreme Court entered an Order denying the Petition, "it appearing to the Court that it is without jurisdiction. . . ." (App. of Pet. K) After an unsuccessful attempt to obtain a rehearing in the Florida Supreme Court, (App. of Pet. L and M) Paris filed the Petition for Writ of Certiorari now under consideration.

B. The Facts

In the summer of 1973 Paris

[3]Art. V. §3(b)(3), Fla. Const. provides that the Supreme Court" "(3) May review by certiorari any decision of a district court of appeal. . .that is in direct conflict with a decision of any district court of appeal or of the supreme court on the same question of law. . . ."

learned through a conversation with another Georgia realtor, Boling, that a large tract of real property in Gulf County, Florida was for sale. (App. of Pet. G at 2, C at 5, 6) Boling had received this information from William Grimsley, a Florida realtor who was a partner in Hilton & Associates, the owner of the property (Id.) Boling gave Paris a copy of an appraisal and a geological survey of the property. (Id.)

In July of the same year Paris contacted Grimsley by telephone and asked Grimsley a number of questions about the property. (App. of Pet. G at 3-4, C at 7) Through a series of telephone conversations Paris and Grimsley tentatively agreed for Paris to come to Florida to personally inspect the property. (Id.)

In August 1973 Paris contacted Cooper and informed him that he knew of a parcel of property in Florida which appeared to be a good investment. (App. of Pet. G at 4) Cooper indicated an interest in the property and authorized Paris to inquire further on his behalf. (Id.)

In early September 1973 Paris travelled to Panama City, Florida, where he met Grimsley (App. of Pet. at G-4) The two discussed Grimsley's asking price and a number of specifics about the property. (Id.) Grimsley told Paris that the price quoted included an allocation of 10% for a broker's commission (Id.) Paris informed Grimsley that he was not registered as a Florida broker and that he was acting on behalf of Cooper, a prospective purchaser. Grimsley and

Paris then travelled by automobile to the Gulf County property. Paris spent at least three hours inspecting the property, locating the survey lines, examining the boundary lines on the Gulf front, taking a number of pictures and generally familiarizing himself with the physical layout of the entire parcel. (Id.)

Paris then returned to Atlanta, discussed the proposed purchase and recommended a purchase price. (App. of Pet. G at 5) With Cooper's authorization, Paris prepared a written offer of purchase, which was submitted by Paris to Grimsley. (Id.) Grimsley indicated a willingness to accept the price offered. (App. of Pet. G at 5) Cooper then contacted attorneys in Atlanta, Georgia to prepare a formal written sales contract. (Id.) Paris worked

with Cooper's attorneys, obtaining information they desired and looking after details requested by them. (Id.)

In mid-September 1973 Paris telephoned Grimsley and arranged a meeting in Panama City with Grimsley and the other partners in Hilton & Associates. (App. of Pet. G at 5-6, C at 9) Paris attended this meeting as arranged and presented the sales contract. (Id.) A series of negotiations followed, with Grimsley, Paris and Cooper's attorneys communicating with one another frequently. (App. of Pet. G at 6) At no time during these negotiations did any of the sellers discuss the matter with Cooper, nor, indeed, did Cooper ever inspect the property. (Id.)

After Paris, Cooper's attorneys, and the sellers had agreed upon the terms of the contract, Paris took the

final draft to Panama City for the sellers' signatures. (Id.) The contract was signed and Paris returned to Atlanta.

The contract was modified a number of times prior to closing. (App. of Pet. G at 7) One such modification dealt with the way in which Paris was to be paid his commission. (Id.) The contract as executed provided for a fee of $315,070.00 to be paid by Cooper. (Id.) The form of payment specified was $100,000.00 cash at closing and the balance to be paid by a promissory note from Cooper to Paris, secured by a junior mortgage on the property. (Id.) In what was unquestionably an effort to avoid the consequences of the Florida Real Estate License Law, Florida Statutes, Chapter 475, Paris had the commission provi-

sions of the contract modified by separate letter agreement, as follows: the $215,070.00 note would be given by Cooper to Hilton & Associates, which would then endorse the note without recourse to Paris, payment being secured by the same purchase money mortgage given by Cooper to the sellers. (Id.) This note was made enforceable only by foreclosure against the property.

In accordance with the modification agreement, Paris received Cooper's $215,070.00 note from Hilton & Associates and a separate check from Cooper in the amount of $100,000.00. (App. of Pet. G at 8) By prior agreement, Paris returned this check to Cooper a few days after closing, and Cooper gave Paris $25,000.00 in cash and a demand note for $75,000.00. (Id.)

The closing was held in Panama City, Florida. Paris was present but Cooper chose not to attend, sending instead an agent with power of attorney to execute the remaining documents. (App. of Pet. G at 9) Cooper executed the two notes in favor of Paris and the mortgage in Atlanta prior to the closing. (Id.)

Paris declared Cooper in default on the two promissory notes in 1975.

ARGUMENT

I. Jurisdiction

Reduced to its essence, Petitioner's constitutional claim is that his contacts with the State of Florida in connection with Cooper's purchase of the Florida property were not sufficient, under the standards implicit in the due process clause of the Fourteenth Amendment, to justify requiring him to defend Cooper's recission action in the Circuit Court for Gulf County, Florida. An analysis of the appendices of the parties and the briefs filed by Paris in the State courts demonstrate that Paris did not preserve this jurisdictional question in the Florida appellate courts. This Court accordingly lacks jurisdiction under 28 USC §1257(3)(1970).

Paris first raised his jurisdic-

tional claim by motion to dismiss the complaint. (App. of Pet B) This motion was denied by the trial court, as was Paris's motion for reconsideration. (App. of Pet. C and D) Under Florida procedures Paris did all that was necessary at the time in order to preserve his jurisdictional argument for appellate review.

Once Paris lodged an appeal to the District Court of Appeal, however, it was necessary to articulate his jurisdictional claim again in order to preserve the record. See generally Roberts v. State, 181 So. 2d 646 (Fla. 1966); International Hod Carriers v. Heftler Construction Co., 112 So. 2d 848, 851-52 (Fla. 1957). He plainly failed to do so. This is demonstrated by an analysis of the assignments of error filed with the Court of Appeal.

(App. of Respond. C) At no point in the assignment of errors did Paris assert that the trial court erred in denying his motion for lack of jurisdiction. (Id.) Neither did he assert his jurisdictional claim in his brief to the Court of Appeal, or in his motion for rehearing. (App. of Pet. V and I; Appellant's brief lodged with Clerk)

Paris similarly overlooked his jurisdictional claim in his petition for writ of certiorari to the Florida Supreme Court (App. of Respond. D) and in his brief in support thereof. Paris did raise a constitutional claim in the Supreme Court (See brief of Petitioner in support of Petition for Writ of Certiorari to the Florida Supreme Court, lodged with the Clerk.), but that claim was predicated upon the equal protection clause, and the argu-

ment asserted was not that the Circuit Court lacked in personam jurisdiction but that the Circuit Court's ruling discriminated against him as a non-resident. Paris's petition and brief utterly failed to assert his jurisdictional claim. Paris's argument to the Supreme Court of Florida was devoted almost exclusively to state law issues. Indeed, he did not even bother to assert that the Supreme Court had appellate jurisdiction -- as opposed to certiorari jurisdiction -- on the permissible ground that the state court had, in ruling upon his motion to dismiss, construed a provision of the federal constitution.

It is submitted that Paris's failure to articulate his jurisdictional question in either the District Court of Appeal or the Florida Supreme

Court forecloses any review of this question by this Court. Amalgamated Food Employees Union v. Logan Valley Plaza, 391 US 308, 313, n.6 (1968); Beck v. Washington, 369 US 541, 553 (1962). Paris must be deemed to have waived the federal issue which he now seeks to have reviewed in this Court[4].

---

[4]In International Hod Carriers v. Heftler Construction Co., 112 So. 2d 848, 851-52 the Supreme Court of Florida noted: "Before this Court will take jurisdiction of a case on the ground that a final judgment or decree has construed a controlling provision of the Florida or Federal Constitution, at least four procedural prerequisites must be established by the party affirmatively seeking to invoke our jurisdiction. They are:

1. The constitutional question must have been raised at the first opportunity,

2. The constitutional provision claimed to have been violated must have been designated specifically either by explicit reference to the article and section or by quotation of the provision,

II. The Merits

Cooper submits that even if the Court finds that there is federal question jurisdiction in this case, it is nevertheless clear that the state trial court correctly rejected Paris's jurisdictional claim and that this case is accordingly not worthy of review by this Court. Paris's contacts with the State of Florida in connection with his services as a real estate broker in violation of the Florida Real Estate Licensing Law were clearly sufficient to make Florida's

---

3. The facts showing the violation must have been stated, and

4. The constitutional question must have been preserved throughout for review. This requirement contemplates adequate coverage of the constitutional question in the appellate briefs." (Emphasis added).

assertion of in personam jurisdiction fair, just and reasonable.

Paris traveled to Florida on at least three occasions in connection with his brokerage activities. He engaged in numerous telephone conversations with the sellers aimed at furthering his efforts to effectuate a sale of the Gulf County property. Indeed, for the period of time during which the contract to purchase was under active consideration, Paris was in almost constant contact with the sellers. Moreover, Paris obtained an enforceable security interest in the Gulf County property by virtue of the partial assignment of mortgage given him by Hilton and Associates pursuant to the agreement among Cooper, Hilton and Associates and Paris.

It is clear that in engaging in these brokerage activities, Paris purposely availed himself ". . . of the privilege of conducting activities within the forum state. . ." Hanson v. Denckla, 357 U.S. 235, 253 (1958). And it is likewise clear that, in engaging in illegal brokerage activities, Paris had ample reason to expect to be hailed into a Florida court. Compare Shaffer v. Heitner, 433 U.S. 186, 216 (1977). Furthermore, by obtaining a security interest in the Gulf County property, it is fair to assume that Paris expected to benefit from Florida's protection of his interest, especially in view of the fact that Paris's agreement with Cooper expressly provided that his note was enforceable only by foreclosure against the Gulf County

property. Compare, e.g., Heitner, supra at 208-209.

Florida's interest in asserting jurisdiction over Paris, moreover, must be considered substantial. As the Court of Appeal and the Circuit Court held, Paris was engaging in brokerage activities clearly unlawful under the Florida Real Estate licensing Law. It requires little analysis to demonstrate that the State of Florida has a very substantial interest in insuring that those who engage in real estate brokerage activities secure a license from the appropriate regulatory agency. The State of Florida has attached sufficient importance to this requirement to make violation of it a crime. Fla. Stat. 475.48 (1977).

Cooper submits that under the facts of this case Florida's assertion of jurisdiction over Paris was consistent with the Due Process Clause of the Constitution.

CONCLUSION

It is respectfully submitted that Paris has wholly failed to sustain his burden of establishing under Rule 19 that there are special and important reasons why the writ should be granted. This Court does not have jurisdiction to consider Paris's sole constitutional claim. But even if this Court should find that it does have jurisdiction, it is clear that the decision below did not involve an important question of federal law which deserves to be settled by this

Court; nor has the Florida Supreme Court or the lower state courts decided a constitutional question in a way which will conflict with the decisions of the Supreme Court. The petition for Writ of Certiorari should be dismissed or in the alternative denied.

Respectfully submitted,

Gary P. Sams
Mahoney Hadlow & Adams
Post Office Box 5617
Tallahassee, Florida 32301
(904) 222-7500

Attorneys for Respondent
Lawrence E. Cooper

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above has been mailed to Raymond A. Cunningham, Esquire, Cunningham & Clarke, 341 W. Ponce de Leon, Decatur, Georgia 30030.

This 6th day of April, 1979.

Gary P. Sams

IN THE SUPREME COURT OF

THE UNITED STATES OF AMERICA

JOHN P. PARIS,

Petitioner,

v.

LAWRENCE E. COOPER, et al.,

Respondents.

Case No. 78-1213

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF FLORIDA

APPENDIX TO BRIEF
FOR RESPONDENT IN OPPOSITION

APPENDIX

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AFFIDAVIT

STATE OF GEORGIA)
) ss.
COUNTY OF FULTON)

Before me, the undersigned authority, personally appeared LAWRENCE E. COOPER, who, by me being first duly sworn, deposes and says:

1. That he is the plaintiff in the above captioned litigation.

2. That he has read the complaint filed herein on his behalf, and the allegations therein are true and correct.

3. That he has personal knowledge of the matters hereinafter set forth.

4. That he agreed with the defendant herein for the defendant to act on his behalf as a real estate broker in the purchase of the real property located in Gulf County,

Florida, more specifically described in the complaint filed herein, and that at all times material hereto it was understood by and between plaintiff and defendant that plaintiff would pay to defendant for his services ten per cent of the total purchase price of the property as and for a real estate brokerage commission.

5. That attached hereto as composite Exhibit "A" are true and correct copies of correspondence received by plaintiff from defendant during the course of defendant's activities in directing and negotiating the sale and closing of the transaction which resulted in the sale of the real property to plaintiff.

6. That the promissory note

attached by copy to the complaint as Exhibit "F" was delivered to defendant by an agent of plaintiff at the closing of the sale of the real property to plaintiff, which closing was conducted in the State of Florida.

7. That in addition to the promissory note attached by copy to the complaint as Exhibit "F", plaintiff, through his duly authorized agent, delivered to defendant at the closing of the sale of this transaction in the State of Florida, a check in the amount of $100,000.00, and that subsequently plaintiff substituted for that $100,000.00 check the promissory note attached to the complaint by copy as Exhibit "E", in the principal amount of $75,000.00, together with a cash payment of $25,000.00, which amounts

represented additional compensation to defendant for real estate brokerage services rendered to plaintiff in the negotiation and sale of the property described in the complaint.

8. Further Affiant saith not.

AFFIDAVIT

STATE OF GEORGIA)
)
COUNTY OF COBB)

Before me, the undersigned authority, personally appears WILLIAM G. GRIMSLEY, JR., who by me being first duly sworn, deposes and says:

1. That he has personal knowledge of the matters hereinafter set forth.

2. That he is one of the partners in Hilton & Associates, a Florida partnership consisting of L. Charles Hilton, Jr., Charles E. Faircloth and William C. Grimsley, Jr.

3. That he participated for himself and on behalf of Hilton & Associates in the negotiation and sale from Hilton & Associates to Lawrence E. Cooper of the property

described on Exhibit "A" to the Complaint herein, which property is located in Gulf County, Florida.

4. That the Defendant, John P. Paris, doing business as Paris Properties, directed and brokered the negotiations between Hilton & Associates and Lawrence E. Cooper which resulted in the closing and sale of the aforementioned property from Hilton & Associates to Lawrence E. Cooper.

5. That although affiant is a registered Florida real estate broker, he at no time acted as a real estate broker in the sale of the above described property to Lawrence E. Cooper by Hilton & Associates, and he had no agreement to participate with John P. Paris for Paris Properties in the negotiation and sale of the

property or the collection of a real estate brokerage commission for that sale.

6. That to affiant's knowledge, John P. Paris was the sole real estate broker in the negotiation, closing and sale of the aforementioned property from Hilton & Associates to Lawrence E. Cooper.

7. Further affiant saith not.

IN THE CIRCUIT COURT,
FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

L. CHARLES HILTON, JR., et al.,

Plaintiffs,

CASE no. 76-135

vs.

LAWRENCE E. COOPER, et al.,

Defendants.

APPELLANT'S ASSIGNMENTS OF ERROR

COMES NOW the Appellant, JOHN P. PARIS, by and through his undersigned attorneys, and, in accordance with Rule 4.2, Fla. App. R., files this Assignments Of Error in the above-styled Interlocutory Appeal, and enumerates the errors as follows, to-wit:

A. The Trial Court erred in entering its Final Summary Judgment dated February 25, 1977, because the record before the Court reflected

that there were genuine issues of material fact.

B. The Trial Court erred . . . because said Final Summary Judgment reflects on its face that the Court considered certain facts which were, simply, not in evidence.

C. The Trial Court erred . . . because said Final Summary Judgment reflects on its face that the Court relied upon certain facts, the existence or non-existence of which are clearly contested questions, according to the evidence before the Court at this state of the proceedings.

D. The Trial Court erred . . . because said Final Summary Judgment fails to consider, not to say resolve, facts which are in dispute in the record at this point in time, and the undisputed establishment of same are

part of a necessary predicate for a Final Summary Judgment in favor of LAWRENCE E. COOPER.

E. The Trial Court erred . . . because it is contrary to the law of Florida regarding the "yardstick" by which a Summary Judgment is to be measured, since there are disputed issues of material fact.

F. The Trial Court erred . . . because said Final Summary Judgment is contrary to the law of Florida in that the Trial Court failed to strictly construe a penal statute.

G. The Trial Court erred . . . in that it is contrary to the law of Florida because the Trial Court has failed to properly apply Ch. 475, F.S. [the Florida Real Estate License Law], the purposes of which are to protect the public from untrained and

unsupervised real estate operators.

H. The Trial Court has erred . . . in that its Judgment is contrary to the facts and the law of Florida, because it has enabled LAWRENCE E. COOPER to gain unconscionable advantage by avoiding a just obligation which he had contracted to pay.

I. The Trial Court erred . . . in that it is contrary to the law of Florida, because it has applied the law of Florida in determining contract rights between JOHN P. PARIS and LAWRENCE E. COOPER, while the determinative law properly is the law of the state and that is the place of performance--in this case, the State of Georgia.

J. The Trial Court erred . . . and in entering its Order Denying

Motion for Rehearing dated March 30, 1977, in that there is additional evidence which was neither known to nor available to PARIS and his counsel copies of Affidavits regarding same having been submitted to the Trial Court with the Motion for Rehearing and the Supplement To Motion For Rehearing.

K. The Trial Court erred in entering its Order Denying Motion For Rehearing, dated March 30, 1977, in that it acted contrary to the Florida Rules of Civil Procedure, the available facts, and the law of Florida.

IN THE SUPREME COURT OF FLORIDA

JOHN P. PARIS,

Petitioner,

-vs-

L. CHARLES HILTON, JR., JOHN D. O'BRIEN and GEORGE DANIEL, Trustees; and LAWRENCE E. COOPER,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioner, JOHN P. PARIS, presents this, his Petition for a Writ of Certiorari and states:

1. Petitioner seeks to have reviewed an Opinion of the District Court of Appeal, First District, dated the 18th day of November, 1977, and filed in the records of said District Court (the Petition For

Rehearing having been denied on the 22nd day of December, 1977). (See Opinion at A-110-113).

2. This Petition is presented under and pursuant to Article 5, Section 3(b)(3), of the Florida Constitution, and Rule 2.1a.(5)(b) of the Florida Appellate Rules.

3. This Petition is accompanied by an Appendix, including the Opinion Petitioner seeks to have reviewed, and by a supporting Brief.

4. The following are the Facts of the case:

(A) This Cause commenced, back in 1976, as an apparently uncomplicated mortgage foreclosure on 4,501 acres in Gulf County, Florida (A-1).

(B) The mortgage in question

was executed in Atlanta, Georgia, on February 8, 1974, by an Atlanta physician, Lawrence E. Cooper; the mortgage secured two notes of equal dignity--one in the amount of $800,275.00 in favor of Hilton & Associates, and a second note in the amount of $215,070.00 that was assigned by Hilton & Associates to Petitioner, JOHN P. PARIS, an Atlanta real estate consultant and broker (A-2).

(C) The "Paris note" was payable in Atlanta (A-16).

(D) In 1975, Cooper defaulted on the annual payment to Hilton & Associates under the larger note, and also

defaulted on the annual payment to PARIS under the smaller note (A-2).

(E) In consequence, Hilton & Associates (L. Charles Hilton, Jr., John D. O'Brien and George Danile, Trustees --hereinafter Hilton) filed the mortgage foreclosure Complaint against Cooper, joining PARIS in the posture of a co-Defendant but specifically alleging that the PARIS note enjoyed equal dignity with the larger Hilton note (A-5).

(F) PARIS immediately filed a Crossclaim, to foreclose his portion of the mortgage and recover the money due under the smaller note (A-32).

(G) Cooper, answering the Crossclaim, alleged the invalidity of PARIS' note, on the basis that the note--though regular on its face--was actually a "real estate commission" obtained in a transaction to which the Florida Real Estate License Law (Ch. 475, F.S.) applied (A-54).

(H) Thereafter, as to the sole issue presented in the Crossclaim, PARIS filed a Motion For Summary Judgment (simply asserting the validity, as a matter of law, of his $215,070.00 note) (A-68), and Cooper also filed his Motion For Summary Judgment (asserting, contra, as a

matter of law, the invalidity of the PARIS note) (A-109).

(I) On February 25, 1977, the Trial Court entered its Final Summary Judgment, holding the PARIS note invalid as a matter of law (and therefore denying the PARIS Motion and granting the Cooper Motion) (A-114-120).

5. Accordingly, the Grounds for invoking the jurisdiction of the Supreme Court are as follows:

(A) The decision by the First District Court, affirming the Trial Court's Final Summary Judgment is in direct conflict with the decision of this Supreme Court in Goodman -vs- Olsen, 305 So2d

753 (1974);

(1) In Goodman, supra, this Court ruled that the validity of contracts is to be governed by the lex loci;

(2) In this case, the Trial Court below ruled to the contrary, refusing to apply the lex loci--under which the note is valid. See Tillman -vs- Gibson, 44 Ga. 440 (Ga. S.Ct. 1931).

(B) The decision by the First District Court, affirming the Trial Court's Final Summary Judgment, is in direct conflict with the decision of this Court in L. Maxy, Inc. -vs- Mayo, 139 So.

121 (1931);

(1) In Maxy, supra, this Court ruled that statutes penal in nature are to be strictly construed and never extended by implication;

(2) In this case, the Trial Court below rejected this legal principle, and extended the operation of Ch. 475, F.S., to invalidate a note signed by a Georgian, in Georgia, payable to a Georgian, in Georgia, on which no Florida documentary stamps were ever placed.

(C) The decision by the First District Court, affirming the Trial Court's Final Summary Judgment, is in direct conflict with the decisions of the Third District Court of Appeal in Geneva Investment, Ltd., et al. -vs- Trafalgar Developers, Ltd., 274 So2d 581 (1973), and Pokress -vs- Tisch Florida Properties, Inc., 153 So2d 346 (1963);

(1) In both Geneva Investment, supra, and Pokress, supra, the Third District Court held that Ch. 475 applied to real estate activities ". . . in this state. . .", following the very words of Ch. 475.01(2), F.S.;

(2) In this case, however, the Trial Court below ignored these words in Ch. 475, and applied the penal privisions of the Act to the Georgia promissory note.

(D) The decision by the First District Court, affirming the Trial Court's Final Summary Judgment, works a denial of the Equal Protection Guarantees provided by the Florida Constitution (Art.I, Sect. 2 and the U.S. Constitution (Amend. XIV, Sect. 1);

(1) These Constitutional guarantees insure that JOHN PARIS, though

not a Floridian, is entitled to enjoy the same legal status before the Florida Courts as a Floridian;

(2) In this case, however, the Trial Court below denied the validity of the PARIS note--while others who also have not been registered under Ch. 475 have prevailed; see Geneva Investments, supra; Pokress, supra; and Morgan -vs- Glassman, 285 So2d 673 (3rd.Dist. 1973).

(E) The decision by the First District Court, affirming the Trial Court's Final

Summary Judgment, works an improper taking of property proscribed by our Florida Constitution (Art. I, Sect. 2) and the U.S. Constitution (Art. XIV, Sect. 1);

(1) These Constitutional guarantees insure that JOHN PARIS, though a Georgian and not registered with the Florida Real Estate Commission, is entitled to possess and enjoy the honest fruits of his honest labors;

(2) In this case, however, the Trial Court below ignored this basic right, and ignored the admonition by this Court

that "...the rights in property are basic civil rights." Corn -vs- State, 322 So2d 4 at 7 (S.Ct. 1976).

6. In consequence, the decision of the District Court of Appeal, First District, which Petitioner PARIS seeks to have reviewed, is in direct conflict with the above-cited decisions of the District Court of Appeal, Third District, and of the Florida Supreme Court; and in the direct conflict with the above-cited guarantees of the Florida and U.S. Constitutions. Because of the reasons and authorities set forth herein and in Petitioner's Brief, it is believed that the decision hereby sought to be reviewed is erroneous.

WHEREFORE, Petitioner, JOHN PARIS,

respectfully requests this Court to grant a Writ of Certiorari, and to enter its Order quashing the decision hereby sought to be reviewed, finding:

(a) That the lex loci (of Georgia) should have been applied by the Trial Court in determining the validity of the Georgia note; and

(b) That Ch. 475, F.S., as a penal statute should be narrowly construed; and

(c) That Ch. 475, F.S., applies only to real estate transactions "...in this state ...; and

(d) That the guarantees of the Florida and U.S. Constitutions require that a Georgian who performs services for a fellow Georgian and receives

back a note payable in Georgia, is entitled to protect and preserve that note in any court anywhere in our United States--including Florida.

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

LAWRENCE E. COOPER,

Plaintiff, CASE NO. 76-15

-vs-

JOHN P. PARIS, individually and doing business as PARIS PROPERTIES,

Defendant and Counterclaimant

-vs-

FIRST NATIONAL BANK OF CHICAGO, a foreign corporation,

Counter-Defendant.

A N S W E R

COMES NOW the Defendant, JOHN P. PARIS, individually and doing business as PARIS PROPERTIES, by and through his undersigned attorneys, and, subject to a continuing objection to jurisdiction, service of process, and sufficiency of service of process, answers the paragraphs in Plaintiff's

Complaint as follows, to-wit:

1. Denied;

2. It is admitted that Defendant, JOHN P. PARIS, is a resident of the State of Georgia, but the remaining allegations are denied;

COUNT I.

3. Denied;

4. Denied;

5. The allegation that the said Contract was entered into on September 15, 1973, is admitted, and the remaining allegations are denied;

6. Admitted;

7. Admitted;

8. Admitted;

9. The allegation that Plaintiff paid to Defendant the sum of $25,000.00 at closing is admitted, and the remaining allegations are denied;

10. Denied;

11. Denied;

12. The allegation that Plaintiff is not a licensed Florida Real Estate Broker is admitted, and the remaining allegations are denied;

13. Denied;

14. The allegation that Plaintiff submitted a letter of April 1, 1975, to Plaintiff, and that Plaintiff is in default on his notes to Defendant is admitted, and the remaining allegations are denied;

15. Denied;

COUNT II.

16. Denied except as above expressly admitted;

17. The allegation that Plaintiff has paid to Defendant the amount of $37,904.00 is admitted, and the remaining allegations are denied.

FIRST DEFENSE: Plaintiff is, by

his own conduct, estopped from asserting the relief requested in his Complaint, and from challenging the validity of the Promissory Notes in question; such conduct on the part of Plaintiff includes, but is not limited to, the payment of $12,904.00 to Defendant, representing accrued interest on a portion of the indebtedness in question, and the execution and submission of the letter of September 15, 1975, a copy of which is attached hereto as Answer Exhibit "A", acknowledging the debt in question.

SECOND DEFENSE: Plaintiff has, by his own conduct, waived any objections to the validity of the indebtednesses described in his Complaint filed herein; such conduct amounting to waiver by Plaintiff includes, but is not limited to, the payment towards

the indebtedness to Defendant of the amount of $12,904.00, and the submission of the letter to Defendant, a copy of which is attached hereto as Answer Exhibit "A".

THIRD DEFENSE: Plaintiff may not, and equitably should not, challenge the validity of the indebtedness described in Plaintiff's Complaint, because of his own delays in doing so, amounting to laches.

FOURTH DEFENSE: Plaintiff is barred from seeking the relief described in Plaintiff's Complaint, because of the Parole Evidence Rule.

FIFTH DEFENSE: Plaintiff, seeking an equitable form of relief in his Complaint filed herein, is barred by the doctrines of equity, including, but not limited to, the "clean hands doctrine."

WHEREFORE, Defendant respectfully prays that Plaintiff's Complaint be dismissed, that Plaintiff take nothing by it and go hence without day, and that a Judgment in favor of Defendant and against Plaintiff for Defendant's taxable costs be entered by this Court.

COUNTERCLAIM

COMES NOW the Counterclaimant, JOHN P. PARIS, by and through his undersigned attorneys, and, without waiving his objection to the jurisdiction, sufficiency of process and sufficiency of service of process but as required by the Order of this Court dated May 5, 1976, files this compulsory Counterclaim against the Counter-Defendants, LAWRENCE E. COOPER, M.D., and FIRST NATIONAL BANK OF CHICAGO, and alleges:

I. To evidence a just debt of $215,070.00, Counter-Defendant, LAWRENCE E. COOPER, M.D., under date of February 8, 1974, made, executed and delivered to Hilton And Associates his Promissory Note in said sum, secured by his Mortgage, encumbering real property in Gulf County, Florida, described in an attachment to said Mortgage; said Mortgage was recorded in Gulf County, Florida, Official Record Book 56 at Page 86, a copy of said Note and Mortgage being attached hereto and marked Counterclaimant's Exhibits "1" and "2", and by reference made a part hereof for all purposes.

II. The said LAWRENCE E. COOPER, M. D. agreed by the covenants of said Mortgage to pay annual installments as they became due, as described on the face of the aforesaid Promissory Note;

however, said Mortgage is now in default since Counter-Defendant has not made the payments required thereunder. By reason of said default in the installments due, Counterclaimant has exercised and does now again exercise his option to declare the entire balance now due and payable and to foreclose said Mortgage.

III. Counterclaimant is now the owner and holder of the Promissory Note in question, and the owner and holder of a portion of the aforesaid Mortgage in question by virtue of a Partial Assignment of Mortgage, and Counterclaimant is entitled to all sums due under said Promissory Note and to become due thereunder henceforth.

IV. In order to determine the changes in status of the title to

said property since the date of the Mortgage being foreclosed, and to ascertain the necessary and proper parties of this suit, it was necessary for the Counterclaimant to purchase a Partial Abstract, and Counterclaimant has incurred the costs of same which is secured by the lien of the Mortgage for which the Counter-Defendant is liable.

V. For the purpose of collection and foreclosure of said Mortgage, same has been placed in the hands of the undersigned attorneys and Counterclaimant has thereby incurred an obligation to pay said attorneys a reasonable fee for the services which the Counter-defendant, LAWRENCE E. COOPER, M.D., is liable for under the terms of the Mortgage and Note, said Counter-Defendant being the fee

simple owner of said real property.

VI. Subsequent to the execution and recording of the Mortgage being foreclosed herein, Counter-Defendant, LAWRENCE E. COOPER, M.D., executed another Mortgage encumbering the aforesaid property, dated 25 July 1975 in favor of First National Bank of Chicago, recorded in Gulf County, Florida, Official Record Book 62 at Page 399, in the amount of $1,009,500.00. Said Mortgage is junior to and inferior to the Mortgage being foreclosed herein by Counter-dlaimant.

VII. In addition, on February 12, 1974, to evidence an additional just debt of $75,000.00, Counter-Defendant made, executed and delivered an additional Promissory Note in the amount of $75,000.00, payable on

demand, together with any attorneys' fees and costs of collection. Counterclaimant has made demand upon Counter-Defendant for payment, and Counter-Defendant has declined and refused to pay; a copy of said Note is attached hereto as Counterclaim Exhibit "3".

WHEREFORE, Counterclaimant prays that Counterclaimant's aforesaid Mortgage be foreclosed and the property sold and the proceeds therefrom first applied to the costs of this suit and to Counterclaimant's attorneys' fees and then applied to the payment of the indebtedness secured by Counterclaimant's Mortgage and, if any of the proceeds then remain, that they be next distributed to the Counter-Defendant as his interest may appear.

It is further prayed that this Court will determine and adjudge that Counterclaimant's Mortgage is superior in time and priority to the aforesaid Mortgage held by First National Bank of Chicago, and any and all persons or corporations or joint ventures claiming through it.

It is further prayed that if a deficiency is found to exist in the repayment by Counter-Defendant to Counterclaimant of the indebtedness being foreclosed herein, that Judgment for same be entered against Counter-Defendant.

It is further prayed that Counterclaimant be awarded a Judgment against Counter-Defendant upon the $75,000.00 Promissory Note, in said principal amount, together with interest at 6% per annum from date and

attorneys' fees and costs as provided in said Note.